

ACQUISITION & RELOCATION

Posted 10/31/08

Can NSP1 grantees use NSP1 funds to provide down payment assistance and cover closing costs for families purchasing foreclosed properties rather than acquiring property directly?

Yes. Providing down payment assistance and closing costs to buyers are eligible under Eligible Use A. However, limiting your homeownership assistance activities to down payment and closing cost assistance may create additional challenges for you to meet the other program requirements such as stabilizing target areas of greatest need, ensuring that properties are vacant prior to purchase, and ensuring that properties assisted with NSP1 funds meet the housing habitability standards.

If a mortgage lender requires that funds be allocated for operating reserves as a condition of the lender approving a mortgage for a multifamily housing project, can NSP1 funds be used for the operating reserves?

Yes, NSP1 funds can be used for operating reserves if the NSP1 grantee can demonstrate that such a requirement is consistent with industry practices and the dollar amount of the required reserves is consistent with local industry standards.

If an NSP1 grantee incurs eligible costs through a failed acquisition of an abandoned or foreclosed property are the incurred costs still eligible?

Generally, yes. HUD recognizes that an NSP1 grantee may investigate the acquisition of some properties and incur costs before acquiring it (such as the cost of an appraisal or a title search), but then decide that the acquisition is not feasible. In such a case, HUD would support an NSP1 grantee that chooses to walk away from a property that looks to be problematic, rather than getting bogged down and losing valuable time when the 18-month obligation requirement is drawing near. For drawdown and reporting purposes, a grantee can allocate the project delivery costs of property acquisitions (or considering purchasing) across all properties under the acquisition eligibility category.

Posted 10/31/08

If the former owner is still living in a property, as a tenant, in a lender-foreclosed property, would the NSP1 grantee be required to pay relocation in order to acquire the property?

In the situation where you have a home that “has been foreclosed upon” (required by NSP1), the former-owner who is still in the property is usually no longer an owner (State law is going to dictate here). The former owner may be a tenant, if the new owner (the lender) has allowed them to stay under a lease agreement...or, they may not be a legal occupant and may be subject to a pending eviction (again, state law will dictate here). So, grantees need to be very careful about determining an “occupant’s” status and entitlements. An unlawful occupant (see 49 CFR 24.2(a)(29)) who is displaced for an NSP1-funded acquisition will not be

entitled to relocation assistance and payments. However, a lawful occupant displaced for an NSP1-funded acquisition will generally be eligible for relocation assistance and payments under the URA.

Updated 06/16/09

If a grantee purchases and rehabilitates a housing unit under NSP1 that is occupied by the former-owner (who is now a tenant under a lease agreement with the REO holder), can the housing unit be sold back to the former-owner/current-tenant? Would the tenant be eligible for relocation assistance during rehabilitation? What if they were not able to purchase the property at a later date?

Yes, the property can be acquired, rehabilitated and sold back to the former owner assuming the owner completes the required housing counseling and is successful in securing financing.

In terms of relocation assistance, if you require a legal tenant to move temporarily for rehabilitation of the property, you must pay temporary relocation costs (see page 2-8, paragraph 2-7 of the Handbook).

Pitfalls: Are you sure that the rehabilitation work will be completed in less than a year (maximum time for temporary relocation)? Do you know what the sales price will be based on the NSP1 rehabilitation requirements?

If the tenant is not financially capable of purchasing the property at the end of your proposed “lease to own” agreement, will you allow them to continue to rent or will you require them to move (pursue eviction). There are “eviction for cause” standards in the URA at 49 CFR 24.206. The issue may become what provisions relating to down payment or other program eligibility requirements are stated in the lease agreement and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

It is quite possible that evicting or requiring a non-purchasing tenant to move for failure to meet the purchase requirements of your NSP1 program may make them eligible for relocation assistance. It is critical that you properly structure your “lease to own” agreement and program in accordance with federal, state, and local law and that you adequately pre-screen rent-to-own homebuyers before entering into an agreement with them.

Posted 11/7/08

If a jurisdiction institutes a lease-purchase program, will the grantee be required to relocate the tenant if he/she does not qualify to purchase the property at the end of the lease term?

Generally no, if the following conditions are met:

- this is a new tenant--who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition, demolition, rehabilitation or conversion of a lower income unit for an NSP1-funded project—someone the URA would consider a “subsequent tenant.”
- before agreeing to occupy the unit, the tenant was provided with a Move in Notice (see 24 CFR 570.606(b)(2)(ii)(B)) that advised them they were occupying an NSP1-funded project for a lease-to-own program and that if they were unable to meet the eligibility requirements to become an owner within the program’s time limit that they would not be eligible for relocation assistance under either the URA and/or section 104(d) (see Appendix 29 of Handbook 1378 for a sample Move in Notice).

However, the eviction for cause standards in the URA 49 CFR 24.206 would also apply. The issue may become what provisions relating to downpayment or other program eligibility requirements are stated in the lease and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

Updated 06/16/09

Can the NSP1 funds be used to rehabilitate foreclosed properties that are not residential when those activities will further neighborhood stabilization, such as a community grocery store?

Yes, under Eligible Use E, a grantee may acquire demolished or vacant properties (including vacant structures) that are not residential for redevelopment. As noted in the question, these must generally be located in targeted areas of greatest need and support the activities in the area that are acquiring, repairing, and selling foreclosed or abandoned homes. Eligible Uses A, B, and C are limited to homes and residential properties.

Updated 06/16/09

If an NSP1 grantee or subrecipient purchases a vacant foreclosed home with NSP1 funds and uses another source of financing for the rehabilitation, can the LMMA national objective be used, meaning the home could be sold to a household over 120% AMI (provided that the home is located in a low-mod area in accordance with the LMMA national objective)?

No, all NSP-assisted housing acquisitions and rehabilitation activities must satisfy the LMMH national objective. As in the CDBG program, all housing rehabilitation activities must meet the national objectives as housing, not area benefit. The NSP1 Notice specifically states that an activity meets the HERA national objective if the activity “provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120% of area median income”.

Posted 11/7/08

Can NSP1 funds be used to refinance existing mortgages and prevent foreclosure?

No. NSP1 funds may not be used to refinance existing mortgages and prevent foreclosure. The program was designed to stabilize communities through acquisition and redevelopment of properties that have already been foreclosed or abandoned. NSP1 grantees should design activities based on the eligible activities listed in the NSP1 Notice.

Posted 06/16/09

If an NSP grantee or designee acquired property during the pre-award period (before NSP1 funding was available) would the acquisition and rehabilitation costs be eligible?

NSP 1 grantees or their designees (subrecipients or developers) are not authorized to begin acquiring property until the grantee has submitted an action plan amendment to HUD. For most NSP1 grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008, an earlier date could be acceptable. However, under Eligible use E, if the property is vacant NSP1 funds can be used for rehabilitation regardless of when the property was acquired. A vacant property is one on which the land and/or buildings are vacant (unoccupied). If there are blighted structures on the property, the grantee could use NSP funds to demolish those structures under Eligible use D; the property would then be vacant and can be redeveloped under Eligible Use E. The grantee should be aware that if the property is acquired with other funding, the Environmental and Uniform Act requirements still apply if NSP funds will be used for the rehabilitation components of the project.

Updated 03/26/09

URA regulations require grantees to send a letter to the sell (Bank) regarding the occupancy and other conditions 60 days before closing. Does this requirement apply to NSP1? Can the appraisal be completed by the lender holding the property or must the acquiring entity order the appraisal?

The NSP1 Notice requires that the buyer obtain an appraisal that is issued within 60 days from the date of the final offer. We realize that the initial offer may not comply with the purchase discount requirements so multiple offers may be made before a final purchase price is agreed upon. There is no time limit for “closing” an acquisition under NSP1.

The acquiring entity can order the appraisal if it complies with the NSP1 Appraisal Guidance (located on the NSP1 website, in NSP1 Resources box, on the Policy Guidance page).

Posted 11/13/08

What is the Initiation of Negotiations (ION) date for NSP1 (the date on which a tenant-occupant becomes eligible for relocation assistance and must be issued a Notice of Eligibility)?

If the tenant is displaced as a result of privately undertaken rehabilitation, demolition, or acquisition, NSP1 uses the definition of ION found at 24 CFR 570.606(b)(3) of the CDBG regulations: The date of the execution of the loan or grant agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property. Otherwise, the definition found in the URA at 49 CFR 24.2(a)(15) is applicable.

Updated 06/17/09

If an NSP1 designee (e.g.; subrecipient or developer) is acquiring a foreclosed property with NSP1 funds, is the designee required to provide written notice to the owner (REO title holder) that the terms of the acquisition must comply with the voluntary acquisition provisions of the Uniform Relocation Act (URA)?

Yes. The URA voluntary acquisition requirements (49 CFR 24.101(b)(1)-(5)) apply to anyone who uses NSP1 funds (or any Federal financial assistance) to acquire property including any Agency, non-profit, or individual homebuyers who use federally-funded downpayment or other financial assistance. To meet these requirements, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, that the acquisition will not take place.

Further, under NSP1, an appraisal of the foreclosed property must be made to determine the current fair market value 60 days prior to making the final offer and the owner must be advised that, under NSP1, the acquisition price must be at a 1% discount from the fair market value (the offer price should reflect the discount proposed by the buyer).

There are specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it (see 49 CFR 24.101(b)(1)(i)-(iv)) or if the buyer does not have the power of eminent domain (see 49 CFR 24.101(b)(2)). Any acquisition under possible threat of eminent domain, cannot be considered a “voluntary acquisition” (even if the seller is willing to negotiate). HUD has developed a number of sample guideforms to assist NSP1 grantees in meeting these requirements. The guideforms and other information and resources are available on the NSP1 Acquisition & Relocation Resources page located at:
<http://www.hud.gov/offices/cpd/library/relocation/NSP1/index.cfm>

Updated 06/17/09

On page 58331 of the October 6, 2008 NSP1 Federal Register Notice, it states that the current market appraised value must comply with the URA requirements at 49 CFR 24.103. Does that mean that NSP1 grantees must do both an appraisal and a review appraisal?

No. The Notice specifies that the URA appraisal requirements of 49 CFR 24.103 must be used in the valuation of NSP1 funded acquisitions of “foreclosed upon”

properties. The URA review appraisal requirements of 49 CFR 24.104 are not required, nor is an appraisal review required. However, NSP1 grantees and subrecipients may choose to adopt an appraisal review process and URA appraisal review requirements for NSP1 funded acquisitions if they so choose.

Posted 11/13/08

Must appraisers meet all state certification requirements and be FIRREA certified or could knowledgeable grantee staff perform this function?

Persons performing appraisals of NSP1 funded acquisitions of “foreclosed upon” properties must meet the appraisal qualifications of 49 CFR 24.103(d). All persons performing such valuations must be qualified to perform an appraisal, even if they are on staff. The regulations at 49 CFR 24.103(d)(2) only require contract “fee” appraisers to be state licensed or certified. Staff appraisers are not required to possess such qualifications, however, they must be qualified. In most circumstances, staff appraisers possess a state appraisal license or certification, even though they are not required to do so by regulation.

Posted 11/13/08

Can NSP1 funds be used to provide financial assistance to relocate a tenant from an area defined as “greatest need” in a grantee’s action plan, if the tenant is moving but is not displaced by an NSP1-funded acquisition or other activity?

No. NSP1 cannot be used to provide financial assistance to persons not displaced by an eligible NSP1 activity.

Posted 11/13/08

How do we define “project” under NSP1 for the purpose of complying with the URA?

The URA regulations define “program or project” at 49 CFR 24.2(a)(22). There is no alternative definition provided under NSP1.

Posted 11/13/08

If there were tenants in the property when the lender/servicer completed foreclosure and the lender/servicer completes the eviction process prior to initiation of negotiations for the sale of the property to an NSP1 grantee, does the NSP1 grantee need to comply with the 12-month look-back provision of the URA?

There is no 12 month “look back” period in the URA statute or regulations. Any legal occupant who is evicted for the purpose of evading a relocation obligation may be eligible for assistance. The URA does address “Eviction for Cause” at 49 CFR 24.206.

Under section 104(d), HUD looks at “vacant occupiable” lower-income dwelling units that have been occupied within 3 months before the execution of an agreement for one-for-one replacement purposes and we would see this as a reasonable timeframe for any NSP1 grantee to consider when approaching an

owner about purchasing a foreclosed property under this new program (for some level of assurance that the owner did not evict a legal occupant in order to sell the property as vacant to the grantee). However, a grantee must use due diligence when approaching any owner about purchasing property with Federal funds, particularly if the property is currently occupied or may have been recently occupied, to assure that the project does not influence the owner's decision to evict an occupant and cause their displacement in order to participate in the grantee's program.

Where an owner either evicts a tenant in order to sell a property as "vacant" to an Agency for a HUD-funded project, HUD will usually presume that the tenant was displaced "for the project." In such cases, the Agency would be responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the Agency can prove that the tenant's move was not attributable to the project (see HUD Handbook 1378, Chapter 1, paragraph 1-6 J.1, regarding evictions for additional guidance).

<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378chp1CPDH.pdf>

Posted 11/13/08

The NSP1 Notice states that the 104(d) one for one unit replacement requirements are waived. Are the 104(d) relocation requirements also waived? It is likely that many NSP1 activities will involve demolition or conversion so 104(d) might well be triggered.

No, as stated in the Notice, HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). The 104(d) relocation assistance provisions of 24 CFR 42.350 are applicable to NSP1 funded projects and have not been waived. Additionally, NSP1 funding recipients must also comply with the 104(d) Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements of 24 CFR 42.325, which also have not been waived.

Posted 11/13/08

If the grantee buys properties under NSP1 and allows a tenant to move in to a property prior to sale, rehab or demolition, would that tenant be entitled to relocation assistance if they are later required to move out? If yes, can this requirement be mitigated by using the "move-in notice" prior to when the tenant signs their lease? Note that this issue could include both residential and commercial tenants if the grantee allows these tenants to occupy the acquired site.

If a new residential-tenant (who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition of a property for an NSP1-funded project--someone the URA would consider a "subsequent tenant") were provided with a Move in Notice that complies with 24 CFR 570.606(b)(2)(ii)(B) prior to leasing or occupying the property (see Appendix 29 of Handbook 1378 for a sample Move in Notice), then neither the URA nor section 104(d) relocation payments would be applicable. The key is that the tenant be fully informed of the possibility that they could be displaced for the planned project before agreeing to

occupy the unit. This same principal could be applied to non-residential tenants who receive a Move in Notice based on the URA definition of “persons not displaced” under 49 CFR 24.2(a)(9)(ii)(B) and (C) since the non-residential tenant would have moved in after ION and be fully informed of the pending project.

Updated 06/17/09

Under NSP1, if a grantee is buying all or substantially all of the foreclosed properties in a targeted area (for example for a land bank or an area of greatest need), would those acquisitions be considered “involuntary” and if yes, would the URA involuntary sale rules apply or would the NSP1 Notice text on page 58339 mean that the voluntary process would be followed?

No, unless this acquisition is being made under the threat of eminent domain or for a specific designated purpose with defined boundaries that are limiting (such as construction of a multi-family housing project or a community center or park on a site defined as two specific blocks). Purchasing foreclosed upon properties for a land bank or making acquisitions of foreclosed upon properties that are randomly available in a specific zip code or neighborhood would NOT be subject to the involuntary requirements.

Posted 11/13/08

A bank has foreclosed on a property and a tenant in the property is forced to move as a result. There are no Federal funds involved in a purchase of the property or reuse. The tenant doesn’t know what to do and doesn’t have immediate funds to find another place. Can a city use NSP1 funds to provide relocation assistance (security deposit, first month’s rent, etc.)?

The tenant is not eligible for URA assistance or payments, nor may NSP1 funds be used to assist this tenant (since they were not displaced by the NSP1 program). However, the city could develop a program using CDBG funds to provide optional relocation assistance (see 24 CFR 570.606(d)).

Posted 11/13/08

If NSP1 funds are combined with other federal funds in a project, including CDBG or HOME, would the NSP1 rules apply or the standard URA and 104(d) rules, including one for one replacement of units?

It is possible that both would apply. The answer would depend on the nature of the project and the use of funds. If NSP1 funds are used to purchase a foreclosed property, then the acquisition is subject to the NSP1 requirements (appraisal, discount, etc.). If HOME funds are used for rehabilitation of this foreclosed property into rental housing affordable to low-moderate income persons, then the HOME rules on income eligibility, HOME rents, affordability period, etc. are applicable. If CDBG funds are used for demolition to convert a low-moderate income dwelling unit that was on this NSP1-acquired property into a park, then the one for one replacement requirements of section 104(d) are applicable (even if NSP1 was used for acquisition of the property).

Posted 11/13/08

The section 104(d) one-for-one replacement requirement for lower income dwelling units demolished or converted has been replaced in NSP1 by a disclosure of the units affected and reporting on new low- and moderate-income units created. Could a jurisdiction count any affordable units produced under the NSP1 program toward meeting its one-for-one replacement requirement under another project funded with either CDBG or HOME?

Yes. An affordable unit created with NSP1-funds may be counted as a replacement unit against a grantee's one-for-one replacement obligation created as a result of the use of CDBG or HOME funds for another project, provided the NSP1 unit meets the requirements of 24 CFR 42.375(b).

Posted 11/13/08

If the re-use of the property is paid by state, local or private funds and the tenant is then asked to move out, would their move be considered to be caused by a "federal project" and thus would the URA be triggered at that point?

A tenant who is required to move for a planned re-use project that is not federally-funded, would not be subject to the URA (however, such a move may be subject to state or local relocation requirements).

Posted 11/20/08

If a home is purchased and rehabilitated with NSP1 funds:

Is there a minimum threshold for reselling the home?

No. There is no minimum price threshold so long as the sale of the home conforms to the NSP1 affordability requirements.

Does the buyer's purchase discount count against the 50% limitation on direct assistance to homebuyers?

The 50% limit applies to down payment assistance. Other means of writing down the purchase price such as purchase price discounts, soft second mortgages, etc. do not count against the down payment assistance cap.

Posted 11/20/08

Does NSP1 trigger Davis Bacon requirements when the funds are used solely for down payment assistance or closing costs?

No. Davis Bacon applies only when rehabilitating or constructing 8 or more units.

Posted 12/01/08

Can a property be purchased through a short sale using NSP1 funds?

No. Short sales are typically used to prevent a foreclosure. Owners use the proceeds of short sales to settle outstanding obligations with lenders. As such, the

title to the property remains in the hands of the homeowner until the sale is executed. Accordingly, a short sale property would not meet the definition of a “foreclosed upon” property provided in the NSP1 Notice.

Posted 06/17/09

Is there a minimum purchase price that would eliminate the appraisal requirement for NSP1-funded acquisitions of foreclosed upon properties?

HUD has determined that compliance with URA appraisal requirements is unnecessarily burdensome if the anticipated value of the proposed acquisition is estimated at \$25,000 or less and the acquisition is voluntary. Consequently, if the grantee determines that the anticipated value of the proposed acquisition is estimated at \$25,000 or less and the acquisition is voluntary, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person qualified to make the valuation (see NSP1 Bridge Notice page 9 for further details).

Updated 06/17/09

Are NSP1 grantees authorized to acquire abandoned properties through real estate auctions? If so, how would the grantee comply with the current market appraised value requirement for NSP1-funded acquisitions since bidders will determine the price?

Yes, a grantee could bid for the property at an auction sale provided the property complies with the definition for “abandoned” cited in the October 6, 2008 NSP1 Federal Register Notice. In terms of the appraisal requirement, no appraisal is required to purchase “abandoned” properties under NSP1.

However, acquisition of a property at a sheriff’s sale with NSP1 funds does not release the grantee from the requirements of the URA with regard to purchasing property. The acquisition policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) apply to any acquisition of real property for a federally funded project except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as “voluntary acquisitions”). The same standards apply to the acquisition of real property at a foreclosure sale for a federally funded project. An acquiring Agency undertaking a “voluntary” acquisition must comply with the procedures described in 49 CFR 24.101(b). For instance, purchasing property under the “voluntary” acquisition provisions at 49 CFR 24.101(b)(1)-(2) requires certain disclosures concerning the voluntary nature of the acquisition and the purchaser’s estimate of the market value of the property. An acquiring Agency must also comply with governing State and local law. The acquiring Agency should consult such laws to determine the identity of the legal title owner at the foreclosure sale and whether any applicable URA disclosures can be made to the legal title owner. It is essential that an acquiring Agency consult State foreclosure law before acquiring property at a foreclosure sale. Issues including, but not limited to, the following must be taken into consideration:

- Does the State require a judicial foreclosure process? If not, then what process is used to foreclose the property?
- During and after foreclosure, who will hold legal title to the property?
- During and directly following foreclosure, who has the right to possess the property?
- Does the foreclosed upon owner have any redemption rights under state law?
- To what degree will the title being passed at the foreclosure sale be marketable?
- What subordinate rights and interests in the property are wiped away as a result of the foreclosure proceeding?

If State or local law precludes compliance with the Uniform Act's acquisition provisions, the acquiring Agency should contact its local HUD Regional Relocation Specialist. The Regional Relocation Specialist will consult with CPD Headquarters and program counsel regarding any potential conflict between the requirements of the Uniform Act and State/ local law in order that appropriate next steps can be determined. Contact information for HUD's Regional Relocation Specialists can be found at www.hud.gov/relocation/contacts.

Posted 3/30/09

When can an NSP1 grantee begin acquiring properties under NSP1 or authorize subrecipients or private entities to acquire properties with NSP1?

NSP1 acquisitions are not authorized to begin until the grantee has submitted an action plan amendment to HUD. For most NSP1 grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008, an earlier date could be acceptable. In addition to submitting an action plan amendment, NSP1 grantees must comply with the environmental review, purchase discount and other eligible-use criteria discussed in the Guidance on Eligible Uses prior to acquiring properties under NSP1. If the acquisition is performed by a subrecipient, private developer or homebuyer, the grantee must give permission or enter into an agreement prior to the acquisition. Properties acquired out of foreclosure before these requirements have been met are not eligible for NSP1 assistance. If you have any doubts about the compliance of an acquisition please contact your local HUD representative or email NSP1-questions@hud.gov before proceeding.

Posted 06/03/09

Is an NSP1 grantee required to have a separate Residential Anti-displacement and Relocation Assistance Plan (RARAP) for each NSP1-funded project?

No. As part of its Consolidated Plan, each jurisdiction is required to submit a certification that it has in effect and is following a Residential Anti-displacement and Relocation Assistance Plan (RARAP) in connection with any activity assisted with funding under the CDBG or HOME Programs (including NSP1). Any grantee receiving funds from the State, local government, or Participating Jurisdiction under their CDBG, HOME or NSP1 Programs should be made aware

of and required to comply with the jurisdiction's existing RARAP. Individual project RARAPs are not prohibited, however, maintaining, managing, and enforcing multiple plans is not recommended. Guideform RARAP has been developed in the event that any jurisdiction wants to consider revisions to its existing RARAP. The RARAP requirements are addressed in 24 CFR 42.325.

ACTION PLAN AMENDMENTS

Updated 06/17/09

If the NSP1 activities identified in our action plan amendment change what should we do?

If the NSP1 activities identified in an approved action plan amendment happen to change, contact HUD to determine whether or not an amendment is needed. If the amendment is needed, NSP1 grantee must allow for a *15-day public comment period* before submitting a new action plan amendment to HUD.

AFFORDABILITY REQUIREMENTS

Posted 8/28/09

Has there been any further discussion at HUD about the maximum rents for the NSP program? We wanted to know whether the High HOME rents (30% of 65% AMI) were applicable for tenants at the 120% AMI level. In the areas we're working in, the market rents will generally constrain the rents anyway but these are long-term restrictions and we're shooting for transformation! The lower rents could be a windfall for the higher-income tenants if they're not aligned more properly (i.e. 30% of 120% AMI). Any further guidance on this?

Sec. B 3 (page 58334) of the NSP Notice requires grantees to ensure continued affordability for assisted units. It says "in its NSP action plan substantial amendment, a grantee will define "affordable rents"." Grantees must also ensure that costs are reasonable and that any subsidy does not unduly enrich a developer. Charging higher rents should increase revenues for the developer and thus reduce the level of initial subsidies.

HUD believes that it is appropriate for grantees to establish higher rent levels for units between 80% and 120% of median. Since neither HOME nor CDBG has policies developed for this middle income group, grantees should develop appropriate policies for their own circumstances. HUD finds the following two options acceptable;

1. Grantees may set rents based on tenant household income, not to exceed comparable unassisted rents in the neighborhood. This would allow variation among submarkets and updating to meet changing market conditions. OR
2. Grantees may set a fixed rent, for example, 30% of the 120% of Area Median Income. This method is easier to administer but less flexible in volatile markets.

Other methodologies could also meet the NSP requirements, provided that they also ensure reasonable costs and comply with all other standards in the Notice.

Updated 04/21/09

How does HUD define “continued affordability” and how long do NSP1 grantees have to monitor NSP1-funded activities?

As stated in the NSP1 Notice, Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of Section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration. However, where NSP1 and HOME requirements conflict, the NSP1 requirements take precedence.

Posted 06/08/09

What are NSP1 grantees required to do in terms of income certification for rental programs?

HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but new tenants must meet the prevailing income limits when taking occupancy of an NSP1-assisted unit throughout the period of affordability.

Related Discussion:

To meet the requirement of continued affordability for the NSP1 Program, the Notice in Section II B (3) (a) says that “HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration”.

Section 92.254 of the HOME regulations affects homeowner programs. In practice, homeowners will have their income certified under the Resale Provision at initial occupancy and when a new owner purchases the home. Under the Recapture Provision, the new purchaser does not certify his or her income, but the funds are returned and a new purchaser certifies that they meet the income limits.

For rental programs, the HOME regulations at 92.252 (h) require annual recertification of tenant incomes. However, this section was not adopted in the NSP1 Program because the CDBG Program has not required annual recertification. The sections that were adopted, 92.252 (a), (c), (e), and (f), require

initial certification and affordable rents. Grantees have therefore questioned when they must certify the incomes of tenants after initial occupancy.

In keeping with legislative intent, CDBG policy, and income certification in Homeowner Programs, HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but, to ensure consistency, new tenants must meet the prevailing income limits when taking occupancy of an NSP1-assisted unit throughout the period of affordability. This requirement applies both to tenants below 50% of Area Median Income and those below 120% of median.

DEMOLITION

Posted 12/14/09 **How do you determine the national objective for demolition?**

In general, the national objective for demolition is based on the end use. There are a couple of cases in which the demolition can be an end in itself. First, in a LMMI area, if the property creates an extreme danger to public health or safety (like a meth lab or collapsing structure), then it can be considered an area benefit (LMMA). Second, if the demolition is done in concert with a coordinated program of redevelopment and/or rehab and/or new construction and/or other improvements, including other demolition, in a target area, which together can reasonably be expected to improve the area, then it can also qualify as LMMA.

In all other cases demolition is an interim use that must have an end use which meets a national objective. For example, if a structure is demolished the vacant land where the structure was located can be placed in a land bank. When the land is removed from the land bank it must be used for an eligible activity and meet a national objective in NSP. Such eligible end uses could include housing (redeveloped on the property), sale (or donation) of the property as side lots to LMMI neighbors, donation of the property to a community garden group, use of the property as a public facility like a park (in NSP1 only), etc.

Posted 11/7/08 **Can NSP1 funds be used for demolition of abandoned properties regardless of whether they have been foreclosed or not?**

Yes, this may be eligible under eligible use D, provided the structures meet a local definition of “blighted”.

DISTRIBUTION OF FUNDS

How can residents in my community access NSP1 funds to combat the foreclosure crisis we are facing?

Please be advised that NSP1 grants are only distributed to designated NSP1 grantees—state agencies and selected local governments. HUD does not make grants directly to individuals or nonprofit organizations. Each grantee will have to determine how best to allocate its NSP1 grant so long as it complies with the eligible uses described in the October 6, 2008 NSP1 Federal Register Notice. When NSP1 grantees submit their action plan amendment to receive their NSP1 allocation, they will indicate how they plan to manage the funds. Local governments & states can distribute funds to other local governments, to nonprofits and other governmental entities, developers, and can carry out activities directly. In some cases, NSP1 grantees may choose to manage their grants collaboratively with other NSP1 grantees or contract out to a private organization. Individual citizens or nonprofits should check with their local government or state to find out how they may receive assistance. Further, contact information for each NSP1 grantee is available on HUD's website located at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/contacts/index.cfm>.

Posted 10/31/08

An Urban County has four cooperating cities which participate in its CDBG program. Several NSP1-related questions arise.

1. Can the County fund only in the unincorporated part of the County?

The NSP1 funds must be targeted to areas of greatest need. If those are all in the unincorporated part of the county, then it can fund only in those areas.

2. Can the County fund projects in cities that are not its urban county partners?

Yes, subject to the "greatest need" requirement and with an agreement between the county and the non-partner cities. The county must also document compliance with section 570.309 of the CDBG regulations. This section requires urban counties to determine that such an activity is necessary to further the purposes of the HCD Act and that reasonable benefits will accrue to residents within the jurisdiction of the grantee.

3. Can any city within the urban county (cooperating or not) apply to the state and receive NSP1 state funding?

Yes, as long as the state's rules allow it, any city could apply, as could the urban county itself.

Posted 11/7/08

Can a participating city that is a member of an urban county, request NSP1 funds from both the county and the state, as long as the funds received from the state and the county are not used on the same project/activity?

Any city or town that receives funds from a county NSP1 grantee as a participating jurisdiction in a county's program may also receive funds from the state. It is up to a state as part of its program design to decide whether it wishes to fund a city or town directly or to channel funding through the county for use in the city or town.

Posted 2/24/09

How does the NSP1 Request for Release of Funds process apply to a grantee that is receiving both a direct NSP1 allocation and state-allocated NSP1 funds?

The grantee must submit two separate Requests for Release of Funds; one would be directed to the State for the NSP1 State formula funds and one to HUD for the direct NSP1 allocation.

DRGR

Posted 11/12/08

We cannot access the DRGR slides on the NSP1 website. Please advise.

DRGR slides are available on the website (with and without notes) at:
<http://www.hud.gov/offices/cpd/communitydevelopment/programs/drgr/drgrs.cfm>

States can contact Mark Mitchell if they still cannot access the training:
Mark.Mitchell@hud.gov

Posted 11/20/08

When entering information into DRGR, where do I put the NSP1 grant amount that has been allocated to an activity?

When adding activities into DRGR use the field called "Total Budget, Disaster Recovery Grant," to put the NSP1 grant amount that has been allocated to an activity field and **do not** use the "Other Funds" field for NSP1 grant information. The distinction is crucial because NSP1 funds cannot be drawn down unless they are properly identified in DRGR.

Posted 02/06/09

In the DRGR system, where do I enter land banking activities?

We recently added activity types called Land Banking-Acquisition (NSP1 Only) and Land Banking-Disposition (NSP1 Only). Please choose the applicable activity type when adding or editing activities.

Posted 02/06/09

How do I enter activities in DRGR that do not match our action plan?

We recommend that grantees break out local programs whenever there is a different national objective, activity type or responsible organization administering the activity. NSP1 grantees should select the DRGR activity type that is most applicable to the NSP1 activity category being implemented.

Posted 02/06/09

How do NSP1 grantees track the 25% low-income set-aside as a separate activity in DRGR?

In DRGR, grantees should select *NSP1 Only-LMMH-25% Set-Aside* under an activity's national objective to track activities that meet the 25% low-income set-aside requirement as a separate activity. All other activities should be tracked with *NSP1 Only-LMMI* or *NA-Admin* for their national objective. Please note, the LMI, SB and UN national objectives are not applicable to NSP1 and should not be used for this program.

Posted 02/24/09

With the current economic climate we would like to know what the turnaround time is for requesting drawdown reimbursements. Also, I cannot find specific instructions for requesting a drawdown?

Drawdowns can be done in the DRGR system after a) the grant paperwork has been processed by your local CPD office and the HUD CFO office in Ft. Worth, b) grantee staff have submitted the info from their Action Plan into the DRGR system, and c) there are at least one authorized DRGR from your office to CREATE a voucher and another to APPROVE a voucher.

If everything is set up OK, vouchers submitted and approved in DRGR are usually processed by the next business day. Information about DRGR, submitting user account requests and a draft user manual will be posted soon at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/drgrs.cfm>

Could you provide me with a list of the standard activity names in DRGR? We're trying to come up with matches for the NSP1 activities and not having the activity names viewable here in the field is a problem.

Attached is a list of activity types we have in DRGR along with the performance measures I have associated with them. We don't really have "standard" activity types like IDIS has issued in their CPD notice. I can edit or change them as needed. I also can create or edit performance measures and then associate them with activity types. The only ones with Low-Mod breakouts are beneficiary data like persons assisted, households assisted, jobs created, etc. In the case of NSP1, they should still report 0-50% AMI under low, 50-80% AMI under mod and then the 80-120% AMI beneficiaries should end up being included in the total #s so we can back them out using a calculation.

If we think there are new good standard measures, then I can add them. But lots of grantees will add all sorts of measures on their own. In cases where they would not be typical measures most grantees would have for an activity type, I suggest the grantees report on those in the activity progress narrative. Some grantees think they have to put something in EVERY measure, but they should only put in the ones that really apply to the specific activity. An example in the

disaster grants is tourism. Some are ad campaigns and others are events- the measures are very different for those.

ELIGIBLE-USE SCENARIOS

Can an NSP1 grantee offer NSP1 funding to a person whose home has been foreclosed in order to buy back the same home or another home? Can a nonprofit purchase a foreclosed home and sell it back to the original owner whose home was foreclosed?

Nothing would prevent a grantee from taking these actions so long as the person receiving the NSP1 assistance meets the income qualifications. However, it is up to the grantee to decide whether this is an appropriate use of their funds.

Can NSP1 funds be used to redevelop a public facility (Eligible Use E) that will be owned and operated by a nonprofit (For example, turning a vacant library into a homeownership center owned and operated by a nonprofit organization)?

Yes. Public facilities can be owned and operated by nonprofit entities. 24 CFR 201(c) provides the regulatory parameters for public facilities. It explains that nonprofit entities may acquire title to public facilities so long as these facilities are open for general use by the general public during normal hours of operation.

Posted 10/31/08

Can clients eligible to participate in the Section 8 Homeownership program also participate in financing provided through the NSP1? For example:

- 1. Can a Section 8 Homeownership client purchase a property that was acquired with NSP1 funding and made available for sale by a subrecipient?**
- 2. Can a Section 8 Homeownership client apply for NSP1 financing to acquire a home and then pay the mortgage with the Section 8 Homeownership Voucher?**

Yes, persons with down payment assistance, participants in lease-purchase programs, and Sec. 8 homeownership voucher holders may use those mechanisms to purchase an NSP1 home, whether from a subrecipient or directly from the unit of government. Additionally, prospective purchasers may receive financial assistance from the NSP1 program, through such means as down payment assistance, to purchase houses that have been acquired with NSP1 funds. The grantee must ensure through its underwriting that such forms of dual assistance do not overly subsidize the purchase, but they are allowed.

New construction is an eligible activity under NSP1, does the new construction have to follow the CDBG requirements and be done under 24 CFR 570.204 by a Community-Based Development Organization?

HUD does not have any specific restrictions on doing new construction of housing beyond the normal CDBG program requirements. New housing

construction does not have to be done by a CBDO to be eligible under the NSP1 program.

Posted 11/7/08

Would such an activity still be eligible if the properties had been foreclosed and vacant versus foreclosed and operating under this scenario?

No, eligible use B does not require NSP1 assisted homes to be vacant. It only requires that they be abandoned or foreclosed. Please see NSP1 Notice for definitions of abandoned and foreclosed.

Posted 11/7/08

Do the resale/recapture provisions apply to properties assisted with NSP1 funding?

Yes. The resale recapture provisions to ensure continued affordability do apply. In its NSP1 action plan substantial amendment, a grantee will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP1 activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration (Note that HERA’s continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b)).

Posted 11/7/08

There will be a period of time between acquisition, rehabilitation, and resale where the NSP1 grantee will need to maintain the property (e.g. grass cutting, snow removal, insurance, etc.). Can the NSP1 grantee recover those costs from NSP1 funds as a delivery cost related to the activity?

Yes. Several sections of the NSP1 Eligible Uses, which are correlated with CDBG Eligible Activities on page 58338 of the NSP1 Notice, and excerpted below, allow Disposition. The CDBG regulations specifically permit temporary property maintenance as part of Disposition. The only constraint for NSP1 is that you cannot add these costs to the eventual purchase price.

Posted 11/7/08

Will a portion of NSP1 allocations be set-aside for supportive services?

There are no specific set-asides for any kind of use under NSP1. However, grantees could use NSP1 funds to support such services in certain circumstances. It will depend on the grantee, the housing stock, etc. Please see the eligible uses in the NSP1 Notice for further details.

Posted 11/7/08

Can a veteran preference of any type be placed on the housing produced using NSP1 funds?

A veteran's preference would not violate section 109 nondiscrimination requirements or any other NSP1/CDBG requirements.

Posted 12/01/08

An NSP1 grantee acquires a home for \$100,000; rehabilitation costs \$100,000; by NSP1 requirements the maximum sale price would be \$200,000. Can the home be resold to an income eligible individual for \$100,000 in order to comply with the NSP1 affordability requirements?

The parameters between which you are working are maximum homeownership assistance payments based on NSP1 affordability requirements and “reasonable costs” determined by OMB Circular A-87. If it costs the NSP1 grantee \$100,000 to subsidize the acquisition and rehabilitation costs to make a home comply with the NSP1 affordability requirements, then that would be allowable and not unreasonable. However, if the NSP1 grantee subsidizes the home much further, you would need a solid explanation of the reasons to satisfy OMB A-87.

Posted 03/19/09

An NSP1 subrecipient would like to acquire a residential property with a blighted home. Once acquired, the subrecipient plans to demolish the blighted home and construct a new home on the same site. Would the construction of a new home on the same site be considered new construction or rehabilitation?

This activity would be considered rehabilitation. CPD Notice 07-08 p. 6 offers guidance on reconstruction and interprets it as a form of rehabilitation. In addition, the “CDBG Guide to National Objectives for Entitlement Communities” p. 2-83 interprets reconstruction as the rebuilding of a structure on the same site in substantially the same manner. The number of dwelling units on the site may not be increased; but, the number of rooms per unit may be increased or decreased. Please refer to these two documents for additional guidance on reconstruction.

Posted 03/19/09

We are planning to use our NSP1 Funds for homeownership assistance. NSP1 funding will be used to provide down payment and closing cost assistance as well as acquisition and rehabilitation. We are proposing that the Housing Authority be the subrecipient and implementing agency for the down payment and closing cost assistance loan program activity. However, the Housing Authority does not have funds available to initially "front" or capitalize the loan program. Therefore, after NSP1 funds are obligated to this activity in DRGR, can we create a voucher to drawdown funds for a quarterly or monthly advance to the Housing Authority to implement the program activity?

The grantee and its subrecipient cannot withdraw grant funds substantially in advance of the need for such funds to pay costs related to the approved activity. The procedure described in the NSP1 question would violate the cash management requirements at section 85.21. The working capital advance method of payment cannot be used in this case. The Housing Authority is not required to

“upfront” the costs and get reimbursed. The County can make withdrawals of NSP1 grant funds to coincide with the timing of the scheduled disbursement of funds by the Housing Authority. The Housing Authority can notify the County of the need for grant funds (e.g., by submitting a request for payment) based on the scheduled closing. The County can withdraw funds through DRGR based on that request, although it must disburse the funds to the Housing Authority as soon as administratively feasible (usually within 3 business days of receipt). The Housing Authority must also disburse the grant funds in payment of activity costs as soon as administratively feasible (again, usually within 3 days of receipt of the funds from the County). The County cannot use budgetary shortfalls as the reason for failing to make timely payments to subrecipients, since it has administrative funds available under NSP1.

Posted 03/19/09

Can a subrecipient of an NSP1 grantee hire a for-profit entity?

Yes. A grantee may contract and pay for the services of (or goods provided by) a for-profit entity to (i) rehabilitate a property acquired with NSP1 funds, (ii) appraise a property to be acquired with NSP1 funds, (iii) construct a public facility, etc provided the contractor was selected through a procurement process that complies with 24 CFR 85.36. In such cases, the services or goods would be provided to the grantee. However, some CDBG activities involve the provision of assistance to third parties, including for-profit entities. One example is the use of CDBG funds to assist a for-profit business in carrying out an economic development project pursuant to 570.203(b). Another example that is relevant to the use of NSP1 funds is the authority under 570.202(b)(1) to assist “...private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes” (emphasis supplied). This authority under 570.202 will be used often under NSP1 and it will involve for-profit as well as nonprofit developers. Grantees are not required to select (or “hire”) for-profit entities they will assist under 570.202 pursuant to a procurement transaction any more than they would be required to “hire” low-mod individuals they will assist pursuant to a procurement transaction.

ENVIRONMENTAL REVIEW

Posted 11/7/08

For a single family home that is being demolished and rebuilt, what type of environmental review will be required under NSP1? Is a demo/rebuild considered rehabilitation or new construction? If new construction, will a full Format II be required?

The level of environmental review required depends upon the program design and project description. The responsible entity should consider the use of the categorical exclusion at §58.35(a)(4) which reads:

§58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

- (4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
- (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section). “Individual action” as used in §58.35(a) refers to an individual approval action about the particular dwelling unit(s) and may include new construction, demolition, and/or reconstruction (demolition and new construction). However, note that this categorical exclusion does not apply to rehabilitation of a building for residential use.

A responsible entity (RE) may apply the categorical exclusion at §58.35(a) on an individual application basis, allowing the RE to use this categorical exclusion when an individual applicant is submitting an application for construction, demolition and/or reconstruction of dwelling units. For instance, if the RE designs a program where individual applicants will be submitting applications for new construction of up to four dwelling units, then each individual application may be considered to be categorically excluded per §58.35(a)(4)(i). Another example is if the RE designs a program where individual applicants will be submitting applications for a project of five more housing units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site, then each individual application may be considered to be categorically excluded per §58.35(a)(4)(ii).

However, it should also be noted that if the program is clearly designed and intended to develop a specific block/neighborhood or other limited geographic area, then an environmental assessment for the program/area will be required.

Posted 11/13/08

After an NSP1 grantee acquires real property with its NSP1 funds, are subsequent transfers of real property subject to HUD’s environmental compliance review requirements?

All HUD environmental compliance review requirements apply only to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and or the use of the property as a result of the transfer, HUD’s environmental review requirements also apply. For NSP1 this means that environmental review requirements will apply:

1. When an NSP1-acquired or -assisted property is sold to a homebuyer,

to some other purchaser such as to operate a multi-family building, or for a redevelopment purpose, and no more NSP1 funds will be used; or,

2. When all NSP1 funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds); or
3. When a land-banked property is dedicated to a permanent use (in no more than ten years).

Posted 11/13/08

How does the NSP1 Request for Release of Funds process apply to a locality receiving both a direct NSP1 allocation and NSP1 funding from the state program?

There have to be two separate Requests for Release of Funds from the NSP1 grantee. One would be directed to HUD for the direct NSP1 allocation the locality receives and the other would be directed to the State for the NSP1 State formula funds.

Posted 11/13/08

Since land banking is not allowed under the CDBG program, are there special rules governing how land banking is assessed?

There are no special rules for land banking. However, one must be aware of whether land banking the property will result in a change in land use. If not, then a compliance review of only related environmental laws (§58.5) is required. But if there is a change in use, an environmental assessment under the National Environmental Policy Act is required too (§58.35(a) (5)).

Posted 11/13/08

Are localities receiving NSP1 funding from the state program required to participate in the National Flood Insurance Program?

No. Localities receiving NSP1 funding from the state program are not required to participate in the National Flood Insurance Program. However, any locality receiving both NSP1 State formula funds and a direct NSP1 allocation, can only use its direct NSP1 allocation for acquisition or construction (including rehabilitation) of buildings in a special flood hazard area (SFHA) if it is participating in the National Flood Insurance Program.

Posted 11/20/08

If an environmental review and request for release of funds is completed for a project/activity in a particular location, is it necessary to perform separate environmental reviews for replicated projects/activities that take place at the same location?

No. HUD regulations (24CFR Part 58.35(b) (7) allow a responsible entity that has successfully completed the environmental review, and the request for release

of funds and certification of compliance (RROF) process has been approved by HUD to add supplemental funding to the project without performing a new environmental review or RROF if the activities, location and environmental conditions have not changed from the original review.

HUD regulations 24CFR Part 58.35(b) states:

“Categorical exclusions not subject to §58.5. The department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.”

HUD regulations 24CFR Part 58.35(b)(7) describes one such activity. It states:

“Approval of supplemental assistance (including insurance or guarantee) to project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47”

Posted 11/20/08

Under CDBG environmental regulations, we are required to complete a formal environmental assessment or EA (per 24CFR58.36) when acquiring/rehabilitating/disposing of five or more housing units that are within 2,000 feet of each other. An EA can take 3-4 months to complete through the FONSI/NOI/RROF/ROF process and may cost in excess of \$10,000. One of our strategies for the NSP1 program is to focus resources on geographical target areas, which could involve acquiring and rehabilitating owner occupied single units within 2000 feet of each other. Under the NSP1 guidelines and requirement for commitment of funds within 18 months, would acquiring and rehabilitating single units within 2000 feet of each other require an EA?

The environmental regulations at 24 CFR 58.35(a)(3)(i) and 58.35(a)(5) do not require an environmental assessment when acquiring, rehabilitating and/or disposing of five or more existing housing units that are located within 2,000 feet of each other. Generally, rehabilitation, acquisition and disposition actions are categorically excluded from the National Environmental Policy Act (NEPA) and, absent extraordinary circumstances (see §58.2(a)(3) for definition of extraordinary circumstances), an Environmental Assessment is not required.

Rehabilitation of residential buildings (with one to four units) is categorically excluded from NEPA, but is subject to review under the federal environmental laws and authorities at §58.5 when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland. (See 24 CFR 58.35(a)(3)). Acquisition or disposition of an existing structure is also categorically excluded from NEPA, but subject to review under the federal environmental laws and authorities at §58.5 provided that the structure will be retained for the same use. (See 24 CFR 58.35(a)(5)). In accordance with 24 CFR 58.35(a)(6), combinations of categorical exclusions listed in §58.35(a) may be combined, allowing for the acquisition, rehabilitation and disposition of an existing single family house to be categorically excluded from NEPA.

Posted 11/20/08

In completing the environmental Appendix A forms, if we acquire vacant residential structures, rehabilitate and resell them as residential structures (without any change in the number of dwelling units) would these actions be considered an increase in residential density?

No. It is HUD policy that where HUD funds are used to rehabilitate or reconstruct housing on a site where housing previously existed, 24 CFR Part 51, Subpart C does not apply if the number of dwelling units on the site is not increased. The responsible entity will need to document in the environmental review record that Subpart C does not apply because the number of people exposed to hazardous operations is not increased. However, if there is an increased number of dwelling units on the site, then compliance with 24 CFR Part 51, Subpart C is required and the responsible entity must not approve projects located at less than the acceptable separation distance from a hazard, as defined in §51.201, unless appropriate mitigation measures are implemented or are already in place. (See 24 CFR 51.202(a)). The acceptable separation distance (ASD) is the distance from above ground stationary containerized hazards of an explosive or fire prone nature, to where a HUD assisted project can be located. HUD has developed an on-line calculation tool to help responsible entities assess the ASD. See <http://www.hud.gov/offices/cpd/environment/asdCalculator.cfm> Additional guidance on 24 CFR Part 51, Subpart C is available in the Department's guidebook "Siting of HUD- Assisted Projects Near Hazardous Facilities" which can be found on-line at <http://www.hud.gov/offices/cpd/environment/training/guidebooks/hazfacilities/>

Appendix A refers to recommended format designed to meet the specific needs of Region 9. For more information specific to Region 9 forms, please contact your Region 9 HUD Environmental Officer. Ernest Molins (northern CA, NV, HI and Guam) at 415-489-6731 or Ernest.Molins@hud.gov. Elizabeth McDargh (southern CA and AZ) at 213-534-2578 or Elizabeth.McDargh@hud.gov.

Posted 11/20/08

We already have CDBG programs in places which have received environmental clearance (contingent on site specific reviews) and a Release of Funds from HUD. Certain NSP1 programs will be the same as the current CDBG programs. Can NSP1 funds be considered 'supplemental assistance' per 24 CFR 58.35(b)(7), so as not to require another environmental review and Release of Funds?

The environmental review needs to be amended and recertified, as appropriate, when there are changes in the scope, magnitude, location or environmental circumstances of a proposal. If these factors regarding a HUD environmentally approved proposal do not change, then the addition of other funds by the same responsible entity will not require additional environmental review or certification or clearance. However, a determination that the project description (including the scope, magnitude, location or environmental circumstances), as environmentally approved, has not changed, is required.

In lieu of a Request for Release of Funds/Certification for the new NSP1 funds, the program office may ask the responsible entity to send in a copy of this determination and a copy of the first Authority to Use Grant Funds issued for the same project.

Posted 2/24/09

If NSP1 funds are used to acquire a property, are subsequent transfers of the property subject to HUD environmental compliance review requirements?

Yes. All HUD environmental compliance review requirements apply to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and or the use of the property as a result of the transfer, HUD environmental review requirements apply. Listed below are scenarios that show when environmental review requirements will apply:

- 1) When an NSP1-acquired or -assisted property is sold to a homebuyer, or to some other purchaser such as to operate a multifamily building or for a redevelopment purpose, and no more NSP1 funds will be used; or
- 2) When all NSP1 funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds);
or
- 3) When a land-banked property is dedicated to a permanent use (in no more than ten years).

The environmental review requirements under NSP1 are taken from the regular CDBG program, but land banking is not allowed under the regular CDBG program. Does that mean that the environmental review requirements do not apply to land banking under NSP1?

There are no special rules for land banking. However, one must be aware of whether land banking the property will result in a change in land use. If there is a change in land use, the NSP1 grantee must complete both an environmental assessment for compliance with the National Environmental Policy Act is required (§58.35(a)(5)) and a compliance review of only related environmental laws (§58.5). If there is no change in land use, the NSP1 grantee is only required to complete a compliance review of only related environmental laws (§58.5).

For those communities receiving NSP1 funds indirectly from the state, are they required to participate in the National Flood Insurance Program?

No. communities receiving NSP1 funds indirectly from the state are not required to participate in the National Flood Insurance Program. However, if a community receives both a direct NSP1 allocation and state-allocated NSP1 funds, they must participate in the National Flood Insurance Program.

Posted 08/12/09

Does HUD allow purchase contracts for NSP properties to be conditional upon an environmental review being completed before purchase, or whether the contract itself is a “choice limiting action” that cannot be executed until the environmental review is completed?

HUD has considered this question and notes that the Environmental regulations at 24 CFR 58.22(d) allows purchase options. HUD also recommends aggregation and tiering of multiple properties for review as strategies in the regulations that can reduce the time necessary to obtain clearances. Some communities have experienced delays even with these methods. HUD recognizes that such agreements or contracts are not prohibited by law or regulation. The Department does not endorse the use of such agreements or contracts but advises that, should grantees elect to use them, they ensure that they are not choice-limiting actions in terms of the environmental review process.

Those employing such agreements should take note the standards for option agreements in 24 CFR 58.22(d) as minimum guidance, namely: " An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price." The grantee remains responsible for ensuring that any such process conforms with HUD regulations.

Posted 08/13/09

If an NSP grantee plans to acquire property through an auction, how can it demonstrate compliance with the environmental review requirements?

Any acquisition of real property, using NSP funding, requires completion of a HUD environmental compliance review before a firm commitment to purchase

the property can be made. This would include property to be acquired through an auction of real property.

However, there are ways the compliance review process could be expedited. One would be if the entity owning the property anticipates that purchase of the property will use NSP funding, then the local government providing the NSP funds could perform a review on the property before the auction. So when the property is purchased using HUD assistance it has already satisfactorily completed the environmental compliance review. Another would be for a conditional offer to be made at the auction as described in the question and answer above.

FINANCING MECHANISMS

Posted 09/09/09

I am trying to understand why someone would use Eligible Use A when it appears that many of the same activities could qualify through Eligible Uses B or E. Please explain.

It is true we see limited use of financing mechanisms. However, you may be overlooking some approaches where Eligible Use A is the best tool. Despite the flexibility in Eligible Uses B and E with Direct Homeownership Assistance and Rehabilitation (which offers financing for single-family and multi-family properties under 24 CFR 570.202(b)), there are some strategies that require Eligible Use A. One such strategy is a large pool of loans for other activities. For example, an NSP grantee in a large metropolitan area combined NSP1 funds and private funds to establish a revolving loan fund to finance the acquisition and rehabilitation of foreclosed upon homes and residential properties. This could only be done under Eligible Use A because a revolving loan fund is not a form of direct homeownership assistance.

In terms of redevelopment activities under Eligible Use E, financing for these activities can also be done through direct homeownership assistance or rehabilitation. However, there might be a case where the grantee needs to use NSP1 as a credit enhancement (e.g., additional collateral, insurance or other protection against defaults) for housing revenue bonds. That part of the transaction would be a financing mechanism.

If the properties being redeveloped under Eligible Use E had been foreclosed upon (as required in Eligible Use A), there is no reason that a credit enhancement or loan guarantee could not be used via Eligible Use A, even if it were for commercial or public facilities eligible under Redevelopment. This is because the corresponding eligible uses under A may also include, "the eligible activities listed below to the extent financing mechanisms are used to carry them out." This means anything under B, C, D, and E, to the extent that a financial mechanism is utilized.

Posted 11/7/08

A grantee wishes to make a loan (the “NSP1 Loan”) to a non-profit entity (the “Developer”) to finance the purchase of foreclosed upon homes and residential properties for rehabilitation (or redevelopment) and resale to low- and moderate-income homebuyers. Upon completion of the rehabilitation (or redevelopment), the Developer will sell each property to an NSP1 income eligible homebuyer and take back a “purchase money mortgage” (i.e., a promissory note secured by a lien on the property). The payments received by the Developer on the purchase money mortgages will be used by it in accordance with NSP1 requirements to finance the purchase and rehabilitation (or redevelopment) of additional foreclosed upon properties for subsequent resale to NSP1 income eligible homebuyers. The Developer will take back a purchase money mortgage on each sale. The terms of the NSP1 Loan may provide for no interest and no principal amortization until the maturity date, and may contain such other terms as may be negotiated between the Developer and the grantee, subject to compliance with applicable NSP1 requirements. The NSP1 Loan terms may also provide for forgiveness of the Developer’s repayment obligations, in whole or in part, upon completion of the approved activities, as specified in the NSP1 Loan agreement, in accordance with NSP1 requirements.

Posted 11/7/08

Is this activity eligible?

The activity can be carried out as a financing mechanism pursuant to Section 2301(c)(3)(A) if the grantee provides the NSP1 funds to the Developer as a loan that is evidenced by a promissory note or other obligation. The financing mechanism can be used to carry out the correlated eligible activities for Section 2301(c)(3)(A) that are listed on page 58338 of the NSP1 Notice published in the *Federal Register* on October 6, 2008.

Updated 06/17/09

Must the revenue received by the Developer from payments on the purchase money mortgage be returned to the grantee or can it be retained by the Developer for similar uses?

No, Section 2301(d)(4) of HERA, which established requirements for the disposition of revenue generated by NSP assisted activities, was repealed by the Recovery Act. As a result of this repeal, revenue generated from the use of NSP funds and received by a private individual or other entity that is not a subrecipient is not required to be returned to the NSP1 grantee as was required by section 2301(d)(4). Notwithstanding the elimination of this requirement, grantees are strongly encouraged to avoid the undue enrichment of entities that are not subrecipients. For more details see the NSP1 Bridge Notice, page 4 located at http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp1_bridgenotice.pdf.

Updated 06/17/09

Must the revenue be returned to HUD after July 30, 2013?

No, revenue generated by NSP1 activities does not have to be returned to HUD after July 30, 2013, but the program income requirements of the CDBG program are still applicable to income directly generated from the use of NSP funds and received by grantees or subrecipients.

Updated 01/23/09

Given the current challenging mortgage market our state Housing Finance Agency (HFA) would like to create a mortgage revenue bond loan program that would use prudent underwriting while reaching out to a lower credit score population with the use of NSP1 funds to support a loan loss reserve for this HFA loan product.

1. What documentation does NSP1 require grantees to maintain for loan loss reserves?

HUD expects a grantee to be able to demonstrate that the methodology used to determine the interest rate that would be applied to individual loans be indicative of the net cost of losses on the loans. HUD prefers a methodology that reflects the following approach: the interest rate applied to loans should be developed based on estimates of future defaults (including timing), recovery rates (including timing of recoveries), and other factors (e.g., costs of recovery) that would affect the estimates of future losses. The loss rate used to determine the amount disbursed into the loss reserve as each loan is made should be derived by discounting net cash flows (i.e., losses-recoveries+/- other receipts/disbursements) to the present and dividing the result by the net present value of loan disbursements over the period that loans will be made. The estimates of future losses would normally be based on historical data for comparable loans.

2. Would at least 25% of the loans covered in the reserve need to be under 50% AMI?

No, but the use of NSP1 funds by HFA would be included in the overall calculation.

3. Would the use of the NSP1 funds in the loan loss reserve escrow account be considered a direct use of NSP1 funds to each of those loans?

Yes

4. Would the use of these funds in a loan loss escrow require that each of the properties in the pool be subject to the INSP1ctions, Environmental review, etc , requirements of NSP1 funds?

Yes. If NSP1 funds are used with respect to any loan, the proceeds of that loan must be used in accordance with the requirements that would apply if NSP1 funds had been used directly.

- 5. Is there anything that would prohibit a borrower who uses the HFA loan that is backed by the loan loss escrow from using other NSP1 funds for down payment and/or rehab needs, if the NSP1 funds come through another non-profit within the state?**

NSP1 funds can be used to supplement financing under private loans so long as NSP1 funds are used in accordance with applicable requirements.

- 6. If there is interest earned on the loan loss reserve fund, it is our expectation that the earnings would remain in the loan loss escrow and over time provide the credit enhancement to more units. Is this acceptable?**

The methodology described above assumes that the interest earned on the loss reserve would be used in conjunction with the initial deposited funds to pay losses as they occur. Thus, it is not expected that material amounts of interest would be left to carry out additional activities.

- 7. Once the program income remittance date passes on July 30, 2013, could earnings continue to remain in the growing loan loss escrow until all of the loans in the pool have been paid off?**

Yes. Again, the methodology assumes that funds in the loss reserve will be invested and the earnings will be used (in conjunction with the original deposit) to pay losses as they occur.

- 8. Would the balance of the loan loss escrow, after all of the loans have been paid off, be required to be returned to HUD or could the HFA seek a waiver to keep the loan loss fund to continue to be a credit enhancement for another generation of loans?**

If funds remain after all loans are repaid, they should be returned to the NSP1 program accounts and used in accordance with requirements then in effect. Note that HUD expects grantees to periodically evaluate loss to the loss reserves and adjust the amount in the reserve based on actual experience on loans and estimates of future losses.

- 9. If NSP1 funds are used to finance homes with a 0% interest rate are the monthly principal repayments on the loan program income?**

Yes. The principal repayments received would be used to provide more buyers with the same program as funds accrue.

10. What documentation would be required for HFA to collect from program recipients since the NSP1 funds went to the HFA and not directly to the buyer?

The HFA would have to document the current market appraised value, purchase discount, and income eligibility of the homebuyer.

11. Is there anything that would prohibit a borrower who uses this HFA loan from using any other NSP1 funds for down payment and/or rehabilitation needs, if the NSP1 funds are from another non-profit within the state?

No. If other NSP1 funds are used to supplement the HFA assistance and the use of the NSP1 funds complies with applicable requirements, it is possible for a borrower to receive NSP1 funds for multiple purposes.

Posted 12/5/08

Does a servicer of second mortgages derived from Neighborhood Stabilization Trust funds (CDBG) need to be a HUD approved servicer?

There is no requirement in the NSP1 Notice regarding qualifications for servicers of second mortgages aside from conformance with OMB Circular A-87. NSP1 grantees (cities, states) may impose their own requirements in accordance with relevant state and local laws and regulations.

Updated 06/17/09

We are developing a homebuyer program with our NSP1 allocation that will offer up to \$50,000 per homebuyer to assist with the acquisition of foreclosed upon homes. The homeowner assistance will be in the form of a 3% simple interest loan forgivable after 15-years. If the buyer sells the home before the 15-year affordability period has ended, besides the initial investment return with interest, how would we calculate the amount of appreciation due to be returned?

For owner-occupied homes which are someone's principal residence, there will be no recapture of any appreciation. The revenues owed would be limited to the NSP1 investment, minus any forgiveness, etc. If you make the NSP1 funds a grant, there is no repayment required, but you'd still have to ensure long-term affordability through resale or recapture provisions, secured by a covenant on the title to the property.

FORMULA ALLOCATION

Who are the grantees that received a direct NSP1 allocation?

HUD awarded grants to a total of 309 grantees including the 55 states and territories and selected local governments to stabilize communities hardest hit by

foreclosures and delinquencies. For a list of grantee names and allocations awarded see link below.

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp1.cfm>

How did HUD allocate NSP1 grant awards?

Congress intended this funding be targeted to areas of greatest need based on the number and percent of foreclosures, subprime mortgages and delinquencies and defaults. Further, Congress also required that each state receive at least \$19.6 million. Many states received significantly more than this mandatory minimum.

Again, following congressional intent to make sure these funds have maximum impact and are targeted to States and local communities with the greatest needs, HUD analyzed data from several different sources:

- The Mortgage Bankers Association *National Delinquency Survey* and the Census Bureau's *American Community Survey*;
- The Federal Reserve's Home Mortgage Disclosure Act (HMDA) data on high-cost loans at greatest risk of default and foreclosure;
- Office of Federal Housing Enterprise Oversight (OFHEO) on home price declines;
- Unemployment data from the Bureau of Labor Statistics; and
- U.S. Postal Service data on home vacancies.

Why didn't MY community receive a grant...we have needs too?

All communities will have access to grants, but Congress was very clear that the purpose of this funding was to target those areas with the greatest exposure to foreclosures, subprime mortgages, delinquencies and defaults. At Congress's direction, we believe we have developed a fair and data-driven formula that will do exactly that. We also wanted to make certain that this funding will have a meaningful impact at the State and local level.

The Housing and Economic Recovery Act of 2008 requires that State's must "give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest needs. If your state government agrees that certain areas that didn't receive direct grants from HUD should get this funding, then it is incumbent on your state to target their funds to these areas.

What will this money do?

This funding is intended to stabilize neighborhoods. To do this, State and local governments can:

- Buy abandoned or foreclosed homes;
- Redevelop demolished or vacant properties;
- Demolish or rehabilitate abandoned, foreclosed or blighted properties;
- Offer down payment and closing cost assistance to low- to moderate-income homebuyers
- Reuse properties for affordable rental housing

In addition, these grantees can create “land banks” to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of property.

HOMEOWNERSHIP COUNSELING

Posted 9/2/09

The NSP1 Notice requires that prospective homebuyer receive at least 8 hours of housing counseling. Two questions have arisen. First, is the cost of counseling an eligible expense if the prospective homebuyer does not ultimately purchase a home through NSP1? Second, if a prospective homebuyer previously received a 8 hours of housing counseling from a HUD-approved counseling agency, are they required to take the course again?

In response to your first question; yes. HUD has been advising grantees that counseling costs are eligible even if the counselee does not purchase a home. HUD expects that the counseling process will lead some prospective purchasers to conclude that they are not ready to buy a home. For those who complete the housing counseling, but do not buy a home, the NSP Bridge Notice instructs grantees to identify these costs as a public service activity eligible under Use E. However, if the prospective homebuyer does acquire a home, the housing counseling costs are eligible under any Use as project delivery costs.

On the second question, HUD has recommended that grantees make the determination whether the prospective homebuyer requires additional housing counseling. Grantees should consider such factors as whether the prospective homebuyer’s financial situation has changed and whether the prospective homebuyer has maintained the required understanding of homeownership.

Updated 02/20/09

If a homebuyer completed homeownership counseling prior to obtaining approval to participate in the NSP1-assisted homebuyer program, is additional counseling necessary to comply with the NSP1 homebuyer counseling requirement?

HUD Headquarters will consider granting an alternative requirement for homebuyers who completed homeownership counseling prior to obtaining

approval to participate in the NSP1-assisted homebuyer program on a case-by-case basis.

Posted 02/20/09

If a homebuyer previously owned a home, would it still be necessary for the homebuyer to complete homebuyer counseling to participate in the NSP1-assisted homebuyer program?

All homebuyers participating in the NSP1-assisted homebuyer program must comply with the NSP1 homebuyer counseling requirement regardless of whether they previously owned a home or not. However, as stated above, HUD Headquarters will consider granting an alternative requirement for homebuyers who completed homeownership counseling prior to obtaining approval to participate in the NSP1-assisted homebuyer program on a case-by-case basis.

Updated 12/5/08

Does the required homeownership counseling for purchasers of foreclosed homes count as a public service and is this activity subject to the 15% public service cap?

Homeownership counseling is not explicitly listed as a separate eligible activity under Eligible Uses A, C or D. Under Eligible Use B, this counseling can be eligible as counseling related to acquisition for the purpose of rehabilitation. Housing Counseling is eligible under Use E, as a public service; this provision is intended to include housing counseling for prospective tenants of redeveloped properties. This provision would have limited applicability to programs where a grantee/subrecipient wants to sell existing residential properties to homebuyers, since Eligible Use E only concerns the redevelopment of vacant/demolished properties.

HUD has determined that homeownership counseling required under Section II.B.3.b. of the NSP1 Notice should be treated as an activity delivery cost of the homeownership assistance activity itself. Other types of housing counseling, such as for prospective tenants, must be classified as a public service. Any housing counseling which is categorized as a public service must: (a) comply with the statutory 15% cap on public service obligations; and (b) must be an eligible activity listed in the NSP1 Notice as corresponding to one of the five Eligible Uses.

Grantees are also reminded that Section II.B.3.b. requires that the counseling is to be provided by a HUD-approved housing counseling agency. Any grantee proposing to use some other entity to provide this counseling must request and receive HUD approval for an alternative requirement.

Updated 12/01/08

Can NSP1 grantees provide homeownership counseling directly rather than contracting with a HUD-certified non-profit?

No, NSP1 grantees must contract with a HUD-approved housing counseling agency unless the NSP1 grantee is given HUD approval to use an alternative counseling program.

Posted 12/01/08

What is the expected format to fulfill the required 8 hours of homebuyer counseling?

The homebuyer counseling requirement can be fulfilled using a classroom style, individual (one on one) or a combination of both formats.

Updated 02/20/09

What will homebuyers need to prove they have fulfilled this requirement?

Homeowners will need a certificate from a HUD-approved housing counseling agency and NSP1 grantees will be expected to maintain copies of these certificates to demonstrate compliance with this requirement.

HOUSING REHABILITATION

Posted 06/22/09

Is rehabilitation eligible for activities conducted under Eligible use E?

Yes. The redevelopment of demolished or vacant units includes housing rehabilitation. The language can be found in the June 19, 2009 NSP1 Federal Register Bridge Notice on page 29228.

Can NSP1 funds be used to secure abandoned properties and minimize vandalism prior to rehabilitation?

Yes. Securing property may be eligible as part of the rehabilitation costs or as a disposition cost under NSP1 depending on how your program is structured. Keep in mind the definition of "abandoned property" under the NSP1 Notice.

Updated 06/17/09

Would energy efficient appliances be eligible as part of a rehabilitation activity?

The Rehabilitation Standards located in section (I) of the NSP1 Federal Register Notice include energy-efficient improvements. Appliances that can be provided in the CDBG program may also be provided in the NSP1 Program. These include refrigerators, and stoves, and do not include washers, dryers, and window air conditioners.

Is radon testing and abatement a mandate for homes assisted with HUD funding?

No, the U.S. Department of Housing and Urban Development does not have requirements for the installation of radon testing and abatement systems for units receiving HUD assistance.

HUD Form 9548-e is the Department's Radon gas and mold notice release agreement given to purchasers of single family HUD-owned properties, i.e., properties that had previously received FHA insurance, but were default and were acquired by HUD. The form requires the purchaser to accept the property "as is", but also provides useful information with regards to Radon gas and mold. Another form to consider is HUD-92564-CN, which advises homebuyers under FHA's single family insurance program to get a home inspection and also encourages testing for radon.

HUD assumes compliance by the users with all applicable State and local regulations. Individuals concerned about radon should check with their respective State radon office. Some states require only licensed contractors installing radon testing and abatement systems.

LAND BANKS

Posted 06/22/09

How did the Bridge Notice impact the use of land banks under NSP1?

The October 6, 2008 NSP1 Federal Register Notice limited the use of land banks with the following language "establish land banks for homes that have been foreclosed upon."

The June 19, 2009 NSP1 Federal Register Bridge Notice expands the use of land banks with the following language "establish and operate land banks for homes and residential properties that have been foreclosed upon."

Updated 06/17/09

Can land banking include purchasing a foreclosed or abandoned property that has a structure on it or does the property have to be vacant land?

As stated in the NSP1 Bridge Notice "[NSP1 funds can be used to] establish and operate land banks for homes and residential properties that have been foreclosed upon;" abandoned homes and residential properties are not eligible.

Posted 04/21/09

How does a land bank differ from a land trust?

The basic differences are timing and land use. A land bank is a short-term (10 years maximum) means of managing land that may not have a defined purpose and cannot be immediately used (e.g. market conditions), while a land trust is a long-term land management technique with a defined purpose and benefit for another party.

Posted 04/21/09

Can NSP1 funds be used to support land trusts?

Yes. Land trusts could be classified as financing mechanisms permissible under Eligible use A of NSP1. For example, the land trust could acquire homes or

residential land with NSP1 funds. Then build new or rehabilitate existing homes and sell them to NSP1-eligible homebuyers, while retaining ownership of the land. The occupant would own the structure and lease the land. The exclusion of the price of land keeps the overall cost lower, allowing the home to remain affordable long-term.

Posted 11/13/08

If the grantee buys property for the purposes of a land bank under eligible use (C) and allows tenants to move into the units on a temporary basis, would those tenants be entitled to relocation assistance if they are later required to move out? The issue with this eligible activity is that grantees have 10 years to re-use the property so it could presumably be many years later that someone would be asked to move out once a final use is determined.

If no person was displaced by the acquisition of the property for the land bank, then the URA is not applicable at the time of the acquisition. If the grantee allows a tenant to move into the acquired property prior to a planned federally-funded re-use project, the tenant-occupant is not eligible for relocation assistance as a result of the original acquisition (see 49 CFR 24.2(a)(9)(ii)(B)). However, the tenant-occupant may be eligible for relocation assistance if they are made to move for a planned re-use project that is funded with federal financial assistance.

25% LOW-INCOME SET-ASIDE

Posted 10/31/08

The HERA legislation requires that 25% of the NSP1 funds shall be used for the purchase and redevelopment of residential properties that will be used to house individuals whose incomes do not exceed 50% of area median income. My city would like to purchase residential structures that will eventually be redeveloped by a subrecipient, but expects that the redevelopment or rehabilitation will not take place for several years. Can we assign those units to a subrecipient without being certain of the date of redevelopment and still count them toward the 25% low-income set-aside?

No. The income targeting requirement is based on actual occupancy. The units could be land banked for up to ten years. However, land banking would not satisfy the 25% set-aside. HUD will determine at grant closeout whether the 25% below 50% requirement has been met. If the houses are not occupied by that time, they will not count toward any housing goal.

Updated 02/03/09

Is it true that an NSP1 grantee may use NSP1 funds to purchase residential property to be used as a homeless shelter to provide transitional or temporary housing? Is it also true that these funds used for this activity will not count towards the 25% set-aside for very low income households?

You may acquire residential property under Eligible Use B or non-residential property (vacant land or vacant structures) under Eligible Use E. Under B, you could rehabilitate or reconstruct residential housing that is permanent housing

(e.g. permanent supportive housing). In this case, if you can document that the residents are below 50% of area median income it would count toward the 25% set-aside.

Under E, redevelopment, you could construct new transitional or temporary residential facilities. Most shelters are not considered housing, since they are short-term. Similarly transitional or temporary residential programs would not be considered housing for very low-income households. You could assist with their construction as public facilities, but this would not count toward the 25% set-aside.

Posted 11/7/08

The HERA law requires that 25% of a grantee's grant must be used for activities that will house individuals or families with incomes at or below 50% of the area median income. The NSP1 program also allows a grantee to use up to 10% of its grant for general administrative and planning expenses. Is the 25% low income targeting requirement applied to the entire grant amount, or only to the 90% of the grant that is not used for general administration?

The HERA statutory language in question begins with the language “not less than 25 percent of the funds appropriated or otherwise made available under this section...” HUD believes that the 25% low income targeting provision must be counted against the entire grant amount. For example, if a grantee received an NSP1 allocation of \$4,000,000, and uses \$400,000 for planning and general administration, it has \$3,600,000 for specific activities. The grantee must ensure that at least \$1,000,000 (25% of \$4 million) of its grant is expended for housing for individuals and families with incomes at or below 50% of the area median income. If it were to only expend 25% of the \$3.6 million (or \$900,000), it would not be in compliance.

PROGRAM ADMINISTRATION

Posted 8/28/09

Can the staff costs associated with putting the NSP2 application together be billed to NSP1 administration?

Yes. The NSP1 Federal Register Notice allows grantees to allocate up to 10% of their NSP1 funds for program administration expenses that comply with 24 CFR 570.206. Under this citation, which applies to NSP1 funds and traditional CDBG funds, section (f) states “funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.”

Updated 6/16/09

When can NSP1 grantees start incurring expenses and what expenses are eligible prior to receiving a grant award?

A grantee can start incurring costs prior to receiving its grant award beginning September 29, 2008. If a grantee wants to start incurring costs beyond general planning and administrative costs, the grantee needs to comply with the provisions of 24 CFR 570.200(h) of the Entitlement regulations—most notably the environmental review requirements. A grantee must also identify these pre-award costs in the substantial amendment to its action plan which it is developing for NSP1 funding.

Will the general administration and planning costs for NSP1 be the same as CDBG (20%)?

No, the general administration and planning costs for NSP1 will **not** be the same as under the regular CDBG program. HUD is providing an alternative requirement that limits general administration and planning costs to 10 percent for NSP1 grants. Additional information on this requirement is in the Federal Register Notice under Section G. State’s direct action, “Requirements.”

Posted 10/31/08

If an NSP1 grantee allocates 10% of its NSP1 allocation to administrative costs in the Substantial Amendment Plan, does this constitute an obligation of the funds to meet the 18-month use requirement, even though the NSP1 grantee will be spending the funds over a four-year period?

The NSP1 definitions are derived from 24 CFR Part 85. These definitions include the terms “allocation” and “obligation,” which have very different meanings. Allocating 10% of an NSP1 grant for general administration and planning costs does not necessarily mean that 10% of the NSP1 grant will be obligated to general administration and planning costs.

How and at what point funds are obligated for things like personnel costs will vary, depending in part on accounting procedures as well as the nature of the cost. For example, if an NSP1 grantee hired a consultant to perform NSP1 eligible activities; there would obviously be a signed contract between the NSP1 grantee

and the consultant. However, for NSP1 grantee staff, obligating personnel costs would be no different from the regular CDBG program; whenever & however the staff is assigned this work. See §85.3 definitions of obligations & accrued expenditures.

Updated 06/17/09

Can the amount of NSP1 funds appropriated for program administration automatically meet the LMMH national objective such as CDBG general administration counts as automatically meeting LMA national objective?

The CDBG rule is based on the assumption that administrative costs will be used in the same proportion as the remainder of the grant, split among LM, slum-blight, and urgent needs national objectives. However, in NSP1, 100% of the funds must benefit LMMI persons. See part II E of the October 6, 2008 NSP1 Federal Register Notice for further description of ways to meet this requirement.

Posted 11/7/08

What are the procedures for entering into an agreement with the state program to administer a portion of our allocation?

NSP1 grantees have two options. They can either enter into a joint agreement with the state, where the state would manage the local government's entire allocation or the local government can enter into a subrecipient agreement with the state, where the state manages a specific activity. Please refer to the Urban County Notice 08-04 for further guidance.

Posted 2/24/09

Can CDBG and HOME funds be used for activity delivery staffing cost or general administrative and planning staffing costs for the implementation of the NSP1 program?

The answer is different for activity delivery costs vs. general administrative & planning costs. There is no problem with using CDBG funds for general administrative and planning costs related to the NSP1 program. The CDBG regulations [24 CFR 570.200(a)(3)(i)] states that planning & general administrative costs will be considered to meet the primary national objective to the same extent that the grantee's program as a whole does.

Activity delivery costs are trickier. The HERA law expanded the definition of 'low- and moderate-income', but for purposes of the NSP1 funding only. Regular CDBG funds must still comply with the HCDA definitions of income eligibility; in addition, new housing construction is eligible under NSP1 but not under CDBG. Therefore, if a grantee wishes to use CDBG funds for activity delivery costs of NSP1 housing activities, then either all the NSP1 beneficiaries would have to be at/below 80% of area median income, or else the grantee staff time records would have to split out the time spent on beneficiaries who are not CDBG income eligible; that time could not be charged to the CDBG program. However, there are no limits on the amount of activity delivery costs that can be charged to NSP1 activities (or to CDBG activities either), so the only situation in which we

can envision a grantee needing to use CDBG funds for NSP1 activity delivery costs might be after the 18-month deadline has passed for obligation of NSP1 funds.

PROGRAM INCOME

Posted 06/17/09

How does the NSP1 Bridge Notice impact the program income requirements for NSP1 funding?

Listed below are the primary ways that program income requirements are impacted:

- revenue generated from NSP funds and received by a private individual or developers that is NOT a subrecipient is NOT required to be returned to the grantee,
- revenue (i.e., gross income) received by a state, unit of general local government, or subrecipient that is directly generated from NSP funds is program income,
- program income received after July 30, 2013 is not required to be returned to HUD and may continue to be used for NSP-eligible activities.

If an NSP1 grantee uses both NSP1 and CDBG funds to acquire and rehabilitate a property, how do you prorate the program income and in this situation can profits be generated?

The proration is based on the amount of NSP1 and regular CDBG funds used. For example, if an entitlement community buys a property for \$10,000, rehabilitates it for \$10,000, and then sells it for \$22,000 (assuming the sale is not to an individual for use as a primary residence). The cost of acquisition and rehabilitation is paid with NSP1 funds (75%) and entitlement funds (25%). The NSP1 program income is \$16,500 (75% of \$22,000) and regular CDBG program income is (\$5,500). The profit that is subject to be returned to the Treasury is \$1,500.

Updated 03/16/09

How long do NSP1 grantees have to track program income on NSP1-funded activities?

As stated in the NSP1 Notice, program income from NSP1-funded activities is subjected to limitations and requirements based on the NSP1 activity that generated the program income.

Updated 03/12/09

Does HUD allow "debt service" as an operating expense when calculating net operating income (NOI)?

NSP1 program income includes gross income from the use or rental of real property less costs [expenses] incidental to generation of the income. Program income generated by rental projects is determined by deducting operating expenses from gross rental income. Debt service consists of principal and/or interest. Payment of principal is not a cost; it is a reduction of a liability. Interest is a cost of capital, not an operating expense. Therefore, neither principal nor

interest can be deducted from gross income for the purpose of determining program income.

However, these restrictions would apply only if the entity that owns the property is the grantee or its sub-recipient. These restrictions would not apply if the property owner were a developer, non-profit or “other entity.”

Updated 06/17/09

If an NSP1 grantee (city, county, town, state) uses NSP1 funds to acquire a foreclosed multifamily family property, sells it to a private owner and provides the owner with NSP1 funds to rehabilitate the property, is the revenue that the owner receives from the rents considered to be program income?

No, the rents received by the private owner would not be considered program income. However, if the NSP1 funds that the private owner received to rehabilitate the property came in the form of a loan, the funds would have to be repaid based on the agreed upon repayment plan with the NSP1 grantee. Further, the affordability requirements on the property would have to remain in place for the specified period of time regardless of transfer of ownership.

Posted 06/17/09

If an NSP1 grantee (city, county, town, state) uses NSP1 funds to acquire a foreclosed multifamily family property, sells it to a subrecipient and provides the subrecipient with NSP1 funds to rehabilitate the property, is the revenue that the owner receives from the rents considered to be program income?

Yes, any rental income that exceeds operating income must be treated as program income and used for NSP-eligible uses.

PRORATING NSP1 FUNDS

Posted 11/19/08

How should grantees apply the statutory requirement regarding benefiting persons at or below 120% of AMI to multi-unit housing properties? Does the language in Section 2301(f)(3)(A)(i) of HERA mean that every unit in a multi-unit housing structure must be occupied by individuals or households with incomes at or below 120 percent of area median income?

Section 2301(f)(3)(A)(i) of the Housing and Economic Recovery Act of 2008 (HERA) requires that “all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income”. Paragraph (ii) of this section further provides that “not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.” HUD has determined that these requirements shall be applied to NSP1-assisted housing activities—those that

meet the low- and moderate-income housing national objective criteria—as follows:

Meeting the 120% AMI targeting requirement:

- If a structure is assisted in whole or in part with NSP1 funds and it contains one housing unit, that unit must be occupied by a low, moderate or middle income household in order to meet the national objective requirements and the NSP1 income targeting requirement.
- If a structure is assisted in whole or in part with NSP1 funds and contains two housing units, at least one unit must be occupied by a low, moderate or middle income household.
- If a structure is assisted in whole or in part with NSP1 funds and contains three or more housing units, the proportion of units occupied by low, moderate and middle income households must be equal to or greater than the proportion of NSP1 assistance in the total project development costs borne by NSP1 funds. Thus, if NSP1 funds represent 50% of the total development costs for a project, then at least 50% of the units must be occupied by low, moderate and middle income persons upon completion and occupancy. If NSP1 funds are the sole funding source for a project, then all units must be occupied by low, moderate and middle income persons. If a grantee assists an income eligible homebuyer to buy a foreclosed fourplex, where the owner will live in one unit, and NSP1 funds represent 60% of the acquisition and rehabilitation costs, then 2 of the 3 rental units must be occupied by income eligible tenants; but if NSP1 funds were no more than 25% of the total costs, then none of the rental units need be occupied by income eligible tenants.
- Where two or more rental buildings being assisted are or will be located on the same or contiguous properties and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose to be a single structure.
- Activities such as acquisition of land, demolition, and installation of infrastructure that are undertaken as a precursor to, or otherwise support the development of housing, may be considered to meet this requirement based on the occupancy of the housing that actually results from these activities.
- If a unit is not initially occupied by the time that a grantee's grant is ready for closeout, it cannot be counted as having been occupied by an income-eligible household.
- Where a grantee can demonstrate that NSP1 assistance only assisted a specific unit in a multi-unit structure and not the structure as a whole—such as downpayment assistance for a homebuyer to purchase a condominium unit—then only that specific assisted unit must meet the income eligibility requirements.

Updated 04/30/09

How should grantees count multi-unit housing properties toward the requirement to expend 25% of NSP1 funds for housing for persons at/below 50% of AMI? Do the requirements of Section 2301(f)(3)(A)(ii) mean that a

grantee can only count expenditures toward the low-income housing targeting requirement if every unit in a multi-unit structure is occupied by a low-income individual or household?

Meeting the 50% AMI targeting requirement:

- In order to be countable toward the low-income targeting requirement, the NSP1 funds must be used for the purchase or redevelopment of abandoned or foreclosed homes or residential properties. Redevelopment of non-residential properties or residential properties that are not abandoned or foreclosed upon cannot be counted toward meeting this requirement.
- In order to be countable toward the low-income targeting requirement, the housing must be permanent housing that meets the LMMH national objective criteria. Homeless shelters, group homes for the developmentally disabled, etc. that are categorized as eligible public facilities cannot be counted toward meeting this requirement.
- If a structure is assisted in whole or in part with NSP1 funds and contains one housing unit, that unit must be occupied by a low income household (at or below 50% of AMI) in order to count NSP1 expenditures for the activity toward the low-income targeting requirement. In this case, 100% of the NSP1 expenditures can be counted toward this requirement.
- If a structure is assisted in whole or in part with NSP1 funds and contains two or more housing units, the proportion of NSP1 funds to the total development costs that can be counted toward the low-income targeting requirement is equal to the proportion of units occupied by low income households. If 30% of total development costs come from NSP1 funds, then 30% of the units in a multi-unit structure must be occupied by low-income households in order to count toward the low-income targeting requirement.
- For purposes of this requirement, it is irrelevant whether NSP1 funds are the sole funding source or are combined with other funds.

PUBLIC FACILITIES

Posted 10/31/08

Can vacant public properties such as a city fire station be redeveloped under Eligible use E—redevelop demolished or vacant properties? The facility is located in a low-mod census tract needing a public facility for neighborhood activities.

Simply locating it in an LMMI area is not sufficient in itself. If the redevelopment activities support the housing activities in the target area then YES it would be eligible.

Posted 11/7/08

Can NSP1 funds be used for homeless shelters and transitional housing?

It is important to differentiate between the between eligibility of activities, income targeting requirements and CDBG national objective requirements that apply to the NSP1 program. NSP1 funds can be used to develop homeless shelters or

transitional housing. Facilities designed to provide shelter for persons having special needs, such as homeless shelters and group homes, are eligible as public facilities under 24 CFR 570.201(c). Any such facilities that are not permanent housing would be categorized as a public facility. It is possible to redevelop demolished or vacant property for such use under Eligible Use E, Redevelopment. Under Eligible Use B, a grantee could purchase and rehabilitate residential properties for reuse as special needs housing.

For a housing activity to count toward meeting the NSP1 program requirement that 25% of a grantee's NSP1 funds must be expended for activities that benefit households at or below 50% of area median income, it must be considered permanent housing and not a public facility under 24 CFR 570.201(c); and it must meet the low/moderate/middle income housing national objective criterion under 24 CFR 570.208(a).

PUBLIC HOUSING

Posted 10/31/08

Can NSP1 funding be used to renovate vacant state- or federally-assisted public housing in NSP1 target areas?

There is no prohibition against this use of NSP1 funds, but HUD encourages grantees to seek funding from the agency that owns the property as well.

PURCHASE DISCOUNT

Posted 06/29/09

If NSP1 funds are used for 99% of the appraised value can the other 1% be paid with another source of funds?

No. The statutory requirement under HERA is that any purchase of a foreclosed upon home or residential property shall be at a discount from the current market appraised value of the home or property.

Posted 06/17/09

How does the NSP1 Bridge Notice impact the purchase discount requirements for NSP1 funding?

The primary ways that the purchase discount requirements are impacted include:

- the elimination of the aggregate purchase discount for NSP1 acquisitions of foreclosed upon homes or residential properties.
- the reduction of the minimum individual discount requirement to 1%.

Posted 10/31/08

Purchasing units below the market value could further bring down the value of the homes in neighborhoods. To avoid this situation, can NSP1 grantees

purchase homes at full price, with seller concessions to achieve the same result of paying less than full price, but the public record shows a market sales price? Likewise when the home is sold to a homebuyer, can NSP1 grantees sell it at market value, offer gifted equity and seller concessions so that the homebuyer does not pay more than the amount of the total eligible expenses?

The HERA legislation requires that homes be purchased at a discount below appraised value. It is difficult to understand how such concessions could be accurately valued to demonstrate compliance with the law. Therefore, HUD does not approve this practice. However, appraisers can account for government actions that depress values in a market; hopefully this will not present undue problems.

If a property seller does not agree to a purchase discount, can NSP1 grantees use other local funds to buy down the purchase price, thereby creating a purchase discount to comply with the NSP1 purchase discount requirement?

No. Title III of the Housing and Economic Recovery Act of 2008 requires that any property purchased in whole or in part with NSP1 funds must be purchased at a discount, regardless of the sources of the money.

Updated 06/17/09

How would the purchase discount requirements apply to a bulk purchase of properties?

Arranging to purchase multiple properties in bulk may help the grantee to meet the 1% individual purchase discount, if those bulk purchase prices were determined using carrying costs & other factors identified in the notice.

Posted 11/20/08

Does the purchase discount apply when an NSP1 grantee provides financing to an eligible individual for the purchase of a home?

The purchase discount is required for all foreclosed homes acquired in part or in whole with NSP1 funds by the grantee directly or indirectly by individuals receiving NSP1 funding from the grantee.

RECOVERY ACT CHANGES

Posted 06/22/09

What is a *bona fide* tenant and how does it impact NSP1?

A *bona fide* tenant is a renter who pays fair market rent and obtained the rental/lease as a result of an arm's length transaction. Congress provided a statutory definition of a *bona fide* tenant for NSP in connection with tenant's rights and notifications required under the Recovery Act. The definition can be found in the statute and the HUD Bridge Notice. The definition applies only to

the Recovery Act requirements for NSP-funded acquisitions of foreclosures by the successor of interest (lender) that occurred after February 17, 2009.

Updated 08/12/09

How does the Recovery Act impact revenues generated by NSP1-funded activities?

The Recovery Act repealed the program income requirements for NSP by making the following changes:

- Revenue (i.e., gross income) received by a state, unit of general local government, or subrecipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of CDBG funds (which term includes NSP grant funds) constitutes CDBG program income. To ensure consistency of treatment of such program income, the definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by states, units of general local government, and subrecipients.
- Cash management. Substantially all program income must be disbursed for eligible NSP activities before additional cash withdrawals are made from the U.S. Treasury.
- Agreements with subrecipients. States and units of general local government must incorporate in subrecipient agreements such provisions as are necessary to ensure compliance with the requirements of this section.

REDEVELOPMENT

Posted 11/7/08

Please clarify how an NSP1 grantee would redevelop blighted structures that do not fall under the definition of foreclosed or abandoned?

To the extent that a grantee wishes to use NSP1 funds for activities that are eligible under only one of the five eligible uses, the five eligible uses listed in HERA and the NSP1 Notice can be viewed as severable and discrete. However, the provisions of the different Eligible Uses become cumulative if a grantee wishes to use NSP1 funding for multiple eligible activities on the same project, and those eligible activities are not all categorized under the same one Eligible Uses.

Under Eligible Use E, a grantee may use NSP1 funds to redevelop a property that is vacant or has been demolished. Providing NSP1 funds are only used for redevelopment activities listed under Eligible Use E, the property need not be abandoned, foreclosed upon or previously residential.

If the property to be redeveloped is not vacant or previously demolished, NSP1 funds can be used to demolish structures on the property prior to redevelopment, under Eligible Use D. However, in order to use NSP1 funds for demolition, the structures must be blighted, but they need not be abandoned and they need not be residential.

If a grantee wishes to use NSP1 funds to purchase and then demolish and redevelop a property, then they must qualify the acquisition under Eligible Use B. Under Eligible Use B, homes and residential properties can be purchased with NSP1 funds if they are abandoned or foreclosed upon; the grantee can rehabilitate, sell, or rent such properties under Eligible Use B; the demolition can be undertaken under Eligible Use D, and the grantee can redevelop the properties under Eligible Use E.

If a grantee wishes to purchase a home and envisions redeveloping the property sometime in the future for some presently-unknown use, the acquisition can be undertaken under Eligible Use C, Land Banks; Eligible Use C can be used only for purchasing and maintaining or disposing of foreclosed upon homes; vacant property, abandoned property or nonresidential property cannot be purchased under Eligible Use C. However, if the redevelopment of the property is imminent, then Eligible Use C would not be appropriate, as the grantee's intent is clearly not to just buy the property and hold it for some indeterminate period for eventual reuse.

If a grantee wishes to use NSP1 funds to provide financing to another entity for that other entity to purchase or redevelop a homes or residential properties, that must be undertaken under Eligible Use A; the property must be foreclosed upon and must be residential.

Posted 11/7/08

Can redevelopment activities be done in an area that does not have a lot of abandoned or foreclosed properties? One of the proposed redevelopment projects would call for the purchase of a vacant multi-unit complex (approximately 270 units of prior LMI housing) from a for-profit individual in the amount of over \$6million. Would the local grantee be able to purchase and redevelop it into a mixed income property?

The NSP1 Notice requires grantees to give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, but it does not mandate that grantees work only in those areas. HUD advises grantees to have a strong rationale for undertaking projects outside areas of greatest need. If you have determined that your proposed project makes sense, the Notice would allow purchase and redevelopment of a vacant multifamily structure into a mixed use project.

Posted 11/20/08

Does “vacant property” refer to vacant land or vacant buildings?

A vacant property under Eligible Use E can either be vacant land or vacant buildings on the land.

Posted 11/20/08

Is vacant, undeveloped land eligible to be redeveloped under Eligible Use E?

In order for a property to be "redeveloped" under Eligible Use E, it must have been previously developed and is now vacant. Raw land would not be eligible for redevelopment. It will be up to the grantee to demonstrate that the property had been previously developed. Previous redevelopment could include vacant buildings or infrastructure improvements such as roads, water, sewer, power lines, etc. However, land that has been farmland, open space, wilderness, etc. would not be eligible for redevelopment. The Department has not imposed any specific standard on how long a property has to be vacant in order to qualify for redevelopment under Eligible Use E; grantees should exercise reasonable judgment in this area. A property that had once been a factory and has been idle for 20 years is not going to raise any issue. However, reasonable minds might question using NSP1 funds to redevelop a site where the previous development was demolished 100 years ago and the property has lain fallow ever since.

Posted 11/20/08

Can NSP1 grantees redevelop property that was not foreclosed upon?

Yes, under eligible use E, properties need not be foreclosed in order to be redeveloped. NSP1 only requires that these properties be demolished or vacant.

Updated 06/17/09

If a property is acquired for redevelopment purposes and disposed of at a discount, does this constitute a financing mechanism?

No, the scenario you described in your question would not be carried out under eligible use A. A financing mechanism for NSP1 purposes must involve the use of NSP1 grant funds in connection with a loan (e.g., direct loan, loan guarantee, loss reserves established in connection with loans) or other form of indebtedness.

STATE DISTRIBUTIONS

If NSP1 grantees represent the areas of greatest need within a state, does this mean that state programs must allocate all NSP1 funds to these areas? If so, how will NSP1 grantees manage to obligate both direct NSP1 allocations and the additional funding from state programs within the 18-month required timeframe?

It is true that communities receiving direct NSP1 allocations represent the areas of greatest need as determined by HUD's formula allocation methodology, but states are not limited to funding those communities. In many states there are likely to be other communities that qualify for NSP1 funding despite the fact that they did not

receive a direct allocation. Each state will have to determine the most appropriate way to allocate its NSP1 funding considering areas of greatest need, as well as past performance and capacity to carry out NSP1 activities within the 18-month required timeframe.

Posted 10/31/08

Are the data sets, down to the block level that were gathered by HUD going to be released to grantees for the entire state?

No, but the data that HUD acquired is available to the Block Group level, which should be sufficient to establish areas of greatest need. HUD's estimates of income levels and housing conditions are contained in those data sets, which are available at:

<http://www.huduser.org/publications/commdevl/NSP1.html>

Posted 11/12/08

Can a state hold back a portion of its allocation for distribution later (e.g. 6 months after the first distribution) because they are concerned that a high foreclosure rate or other market changes are expected in certain areas and they want to make sure they have enough money for those areas?

No. The state is expected to submit the Action Plan substantial amendment based on the full allocation and the conditions in place or expected (see HERA law regarding factor #3—"areas likely to face a significant rise in foreclosures") at the present time. A grantee can submit an amendment to change the plan if circumstances change from what was initially submitted. In addition, a state's substantial amendment can provide that the state will hold 2 separate competitions (and state the criteria that the funds will be competed on) to account for changed conditions. The problem with this approach is that the 18 month-rule still applies, so the competitions would have to be close together in time. In addition, remember, unlike the "regular" CDBG program, simply obligating funds to a unit of general local government/entitlement or other entity does not address the "use" requirements. See the "definitions" section of the Notice.

Posted 11/12/08

Can a state set aside NSP1 funds for rural areas or other target areas, because they just don't have good data on small places yet and don't want to get a bunch of applications which warrant funding under the targeting criteria and then not have enough money?

A set-aside is not a good idea. The state should outline, to the greatest extent possible, how the funds address the areas of greatest need—including rural areas. States can highlight several rural areas (thus narrowing the field of potential applicants), then collect information from these rural localities to help target NSP1 funds. For example, the state can determine that 5 areas of the state are the highest need, and determine that those areas will get 20% of the available funding each, and then have a competition within those areas to distribute the 20%.

Posted 11/12/08

We are concerned that some of the areas of greatest need may not have the capacity to administer NSP1 funds. As a result, the state would have to hire an NSP1 administrator or administer the areas' allocated funds at the state level. If an area receiving NSP1 funding lacked the capacity to administer the funds it's possible that the state would have to withdraw the funding and reallocate it. Can HUD offer any guidance on how states should handle these situations?

HUD would not force the state to fund an entity that clearly lacks capacity. The State could consider hiring a consultant or awarding funds to a regional planning commission or other entity to help localities of highest need that lack capacity so they can benefit from NSP1.

Posted 11/12/08

If NSP1 funds are distributed on an application or proposal basis for eligible areas with greatest need, can states offer the entire menu of eligible uses and let the localities apply for NSP1 funding based on the activities that best meet their local needs?

The state should have a general sense of the specific needs that exist in the state and then be able to address those needs with the appropriate eligible activity. It is recommended that states first identify which localities are eligible to apply for NSP1 funding. Next, states must determine how NSP1 funding will be distributed amongst these localities based on need. Through the process, states will learn which eligible uses are most appropriate for a given locality. Further, states must determine that localities receiving NSP1 funding have the capacity to administer the funds in a timely manner. Finally, keep in mind if a state chooses to have a competition for NSP1 funding, the criteria for selecting localities must be clear and in conformance with the NSP1 Notice.

Posted 11/12/08

Do all NSP1 activities have to start with a foreclosed property?

No, all activities do not have to start with a foreclosed property. Please review the five eligible uses listed in the NSP1 Notice.

Posted 11/12/08

What types of redevelopment are eligible under NSP1? Must it be all housing, or can some be commercial or public facilities, etc.?

The main purpose of the NSP1 program is to redevelop abandoned and foreclosed homes. Public facilities are permitted under eligible activity "e" to the extent that they support housing. Although commercial redevelopment is not an ineligible use of funds, it is not the intent of the program, and thus should not be a significant use of the state's NSP1 allocation.

Posted 11/12/08

How does HUD define transitional housing for NSP1?

Non-permanent housing is eligible as a public facility. As this type of housing is not permanent it cannot be counted toward the HERA law provision that grantees must use 25% of NSP1 funds to house individuals or families whose incomes do not exceed 50% of area median income.

Posted 11/12/08

What can be expected in terms of performance measures for NSP1?

HUD is still working through these issues and expects to have more information soon. We will post the information on our website when it becomes available.

Posted 11/12/08

If the NSP1 activities identified in our action plan amendment are not approved or change what should we do?

If there are any problems with the action plan amendment submitted by the state, HUD will notify the state as quickly as possible to address the issue. If the NSP1 activities identified in an approved action plan amendment happen to change, the NSP1 grantee must allow for a 15 day public comment period before submitting a new action plan amendment to HUD.

TAX FORECLOSURES

Can a community (NSP Sub-recipient) purchase a tax foreclosed, vacant property using NSP? Many communities are being offered the opportunity to purchase tax foreclosed properties from the County Treasurer's office for back taxes owed

On the second question, the Notice prohibits grantees from acquiring properties from themselves. However, it does not prohibit a municipality from acquiring it from another jurisdiction. I am going to send a copy of this to Paul Webster to make sure he agrees; I believe that he has stated such a policy.

Posted 10/31/08

According to the October 6, 2008 NSP1 Federal Register Notice “an NSP1 recipient may not provide NSP1 funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay the necessary and reasonable costs related to the appraisal and transfer of title.” Is the NSP1 recipient the municipality administering the funds or are the subcontractors of the municipality? If it is the municipality, then would that preclude down payment assistance to a homeowner who purchases a HUD \$1 home from the municipality which must be in the chain of title or a municipal land-bank?

The unit of general local government (municipality or urban county) is the recipient. Sales at nominal value (One Dollar Houses, for example) are acceptable. The recipient may use down payment assistance to assist purchasers of tax-foreclosed houses. The concern in prohibiting third party purchases on tax-foreclosed properties is that grantees will in effect reimburse themselves for the

value of the tax lien. HUD does not allow units of government to receive funds in this way, which would also reduce available NSP1 funding for other projects.

Updated 01/23/09

Can NSP1 funds be used to pay “back taxes,” clear tax liens or other liens, code enforcement fines, etc. if they are associated with acquisition costs?

Yes, there are some situations where NSP1 funds could be used to pay these taxes, but the options are limited. If title to a foreclosed property is held by a private entity and the tax was levied by the NSP1 grantee or another jurisdiction, then NSP1 funds can be used indirectly to clear the tax liens through the acquisition process. For example, if the fair market value of a foreclosed property less the NSP1 required purchase discount is valued at \$100,000, and the property has a \$10,000 tax lien, the NSP1 grantee can acquire the property for \$100,000. The title company disbursing the funds from the transaction will give the seller \$90,000 less any applicable fees and \$10,000 will be forwarded to the jurisdiction that levied the tax lien. Please keep in mind that you have only 18 months to obligate your jurisdiction’s NSP1 funds. Therefore, it is important that you be careful not to take on acquisitions that may get mired in title or other issues preventing timely closing. If a property has title or other legal issues associated with it that could delay the acquisition, we strongly encourage you to move on to the next property.

**TIMELINESS OF USE & EXPENDITURE
OF NSP1 FUNDS**

Updated 04/08/09

How long do States and local communities have to spend this money?

Grantees have 18 months to obligate these funds, and four years to expend funds. Congress was very clear that this money be put to work quickly. In some areas, this level of federal funding will be unprecedented. Thus, HUD expects that grantees will have contracts signed or, at minimum, made written offers for properties within 18 months. Options or other non-binding instruments are not acceptable.

Congress was very clear that there is an urgency to deal with a national housing crisis.

Updated 05/18/09

How does HUD determine when NSP1 funds have been obligated?

As stated in the NSP1 Federal Register Notice page 58332, “Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.” In other

words, HUD expects grantees to obligate funds to specific activities. The following are examples of obligations for a “specific activity”:

- Execution of an agreement with a REO holder to acquire one or more foreclosed upon properties;
- Execution of a contract to rehabilitate an abandoned or foreclosed upon property;
- Execution of a loan agreement;
- Issuance of a purchase order for equipment/supplies used to maintain acquired property;
- Execution of a demolition contract;
- Administrative action necessary to assign a staff person to work on NSP1 activities.

The execution of a subrecipient agreement would **NOT** qualify as an activity that counts toward meeting the 18-month obligation requirement:

Posted 04/08/09

What will happen if grantees don’t obligate their funding within 18 months?

HUD will recapture the funds.